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[www.federaladvocates.com](http://www.federaladvocates.com), 2013

October 31, 2013

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

### **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.

### **CFPB Auto Lending**

At the request of NADA, a bipartisan Senate letter was sent to CFPB expressing concern for its process and conclusions. To review, on June 20, 35 Republican Members of the House sent a letter to CFPB questioning the manner in which its recent guidance regarding lending practices in the auto lending industry was rendered and requesting details concerning the process of analyzing potential fair lending violations. The letter comes following a similar inquiry made by 13 Democratic Members of the House Financial Services Committee to CFPB on May 28, 2013. The CFPB guidance at issue

advised bank and nonbank indirect auto financial institutions about compliance with federal fair lending requirements in connection with the practice by which auto dealers “mark up” the financial institution’s risk-based buy rate and receive compensation based on the increased interest revenues.

The Republican letter takes issue with the CFPB “initiating [a] process without a public hearing, without public comment, and without releasing the data, methodology, or analysis it relied upon to support such an important change in policy.” The letter notes that “allegations of disparate impact do not involve intentional conduct, but instead consist solely of statistical analysis of past transactions” and that any model assessing such impact must be reliable and accurate. Because the guidance fails to disclose the model for assessing fair lending violations, the letter requested that the CFPB provide all pertinent details regarding its methodology to evaluate whether the statistical model supports its supervision and examination of financial institutions.

In addition to taking issue with the CFPB’s statistical analysis, the Republican letter also characterized the ECOA compliance controls suggested in the CFPB bulletin as “onerous and unrealistic,” noting that “restricting consumer choice is highly problematic.” To support the controls prescribed by the guidance, the Republican letter requested that the CFPB provide “all studies, analysis, and information it relied upon in developing its guidance document.” Specifically, the two congressional letters requested the analysis conducted by the CFPB on the impact of these prescribed controls on the auto lending industry and any coordination activities undertaken with other agencies in developing the guidance.

On June 20, CFPB provided a response to the May 28 Democrat letter which essentially reiterated both the CFPB’s authority to supervise and investigate financial institutions engaged in auto finance and the CFPB’s concerns that pricing discretion may create a significant risk of discrimination. CFPB stated that it used a proxy methodology that is a widely accepted mathematical and systematic approach in various arenas, including for marketing in the auto industry itself. The proxy analysis is conducted through publicly available data from the Social Security Administration and Census Bureau.

### **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 35), 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: 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.



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

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**I. Consumer Financial Protection Bureau**

- a. The CFPB built an internet tool that is designed to assist the public understand the regulations promulgated by the Bureau. Branded, “eRegulations”, the site is designed to provide official interpretations of the different rules and regulations, as well as provide background information about the regulation as it was contained in the Federal Register notice. This tool has a search function to easily find particular regulations. The CFPB will be continually updating this tool based on its own findings and input from users. Suggestions on the use or improvement of the tool can be sent to [CFPB\\_eRegs\\_Team@cfpb.gov](mailto:CFPB_eRegs_Team@cfpb.gov).
- b. In a recent speech given to the Reuters Washington Summit, Director Cordray indicated that the Bureau would not shy away from enforcement actions against individuals and businesses if it was warranted.

**II. Department of Justice**

No significant activity

**III. Department of Labor**

No Significant Activity

**IV. Environmental Protection Agency**

No Significant Activity

**V. Federal Trade Commission**

**a. Aaron's settlement**

This past month, the FTC settled claims against Aaron's Inc., a rent-to-own chain from which consumers can rent various consumer goods including personal computers. The FTC alleged that Aaron's and its franchisees used software on rental computers that monitored and tracked the customer's activity without notice to or consent from the consumer. The software allegedly captured the customer's key strokes, including sensitive information like logins and passwords, as well as took video of the customer. The computers also utilized location tracking mechanisms without the consumer's notice or consent. As part of the settlement agreement, Aaron's is prohibited from monitoring keystrokes, capturing screenshots and activating the computer's webcam to video the customer. Moreover, Aaron's is required to provide clear and separate notice that location tracking mechanisms are used, how they are used, and how information is used. Aaron's is also required to obtain the consumers' express consent to use the tracking mechanisms

**VI. Internal Revenue Service**

**a. IRS Announces Delay to 2014 Tax Filing Season**

As a result of the government shut down, the IRS has announced a delay to the start of the 2014 tax season. The IRS estimates a one to two week delay, but will announce the official start day sometime in December. The original start day that the IRS would accept and process individual tax returns was January 21<sup>st</sup>. The new start date will be no earlier than January 28<sup>th</sup> and possibly as late as February 4<sup>th</sup>.

**VII. National Highway Traffic Safety Administration**

No Significant Activity

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

No Significant Activity

**IX. Federal Communications Commission**

**a. Changes to Telemarketing Rules (Telephone Consumer Protection Act)**

Effective October 16, no telemarketing calls may be made to a consumer's cell phone using an automated telephone dialing system (including a predictive dialer) or prerecorded message unless the consumer provided "prior express written consent." Written consent was not previously required. In addition, prerecorded telemarketing messages may no longer be sent to

residential numbers without the call recipient's prior express written consent. The amendment also eliminated the EBR exemption for prerecorded messages sent to residential numbers. However, the requirements for informational and other non-sales calls made to residential numbers have not changed. Consent is not required for such calls.

## **X. Significant State Law/Regulatory Updates**

### **a. Pending Legislation/Regulation**

#### **i. Kentucky**

- 1. Proposed Rule 20542:** The proposed rule would allow the Motor Vehicle Commission the ability to deny an application for a license if the name or proposed trade name of the licensee is the same or so similar to the trade name of an existing licensee that the proposed name would confuse or otherwise mislead the public into believing that the two (2) entities are the same or related. If no other grounds are cited for the denial of the application, the applicant may reapply with a new trade name within ten (10) days of denial without remitting an additional application fee.
- 2. Proposed Rule 20544:** Adds "electronic" medium in the definition of Advertising in its rules on motor vehicle advertising. This will, in effect, apply the current advertising standards to internet advertising.

#### **ii. New Jersey**

- 1. A.B. 3610:** This bill would require dealers to disclose all storm or flood damaged vehicles which require repairs prior to sales. The disclosure may be made on the certificate of title. The bill also authorizes a secure power of attorney.
- 2. S.B. 3007:** Makes it an unlawful practice under the Consumer Fraud Act for a dealer to sell a used motor vehicle to a consumer without giving the consumer a consumer information brochure written in simple, clear, understandable, and easily readable way, which informs the consumer of certain rights under the Used Car Lemon Law; provides monetary penalties for violations; authorizes the assessment of punitive damages, and the awarding of tremble damages and costs to the injured party.

### **b. Passed Legislation/Regulations**

**i. Florida**

1. **2013 FL Regulation Text 39759:** The regulation provides relief to inadvertent sales and use tax registration errors.
2. **2013 FL Regulation Text 39761:** Implements a new tire fee of \$1 on each new motor vehicle sold at retail. Fee is to be paid by the dealer and disclosed on the invoice separately, but the vehicle purchase price cannot be increased to cover the dealer's cost.

**XI. Significant Case Law Updates**

**No Significant Activity**