



**To:** National Independent Automobile Dealers Association  
**From:** Shaun K. Petersen  
**Re:** February 2014 Regulatory Update  
**Date:** March 3, 2014

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**I. Consumer Financial Protection Bureau**

a. Comments to Advance Notice of Proposed Rulemaking on Debt Collection

In November, the CFPB announced an Advance Notice of Proposed Rulemaking (“ANPR”) on debt collection. In the ANPR, the Bureau asked for comments on a myriad of issues related to debt collection issues including whether the CFPB should promulgate rules under the Fair Debt Collections Practices Act (“FDCPA”) or under authority granted them to promulgate rules under the Dodd-Frank Act defining unfair, deceptive, or abusive practices. NIADA submitted comments opposing any attempt to impose new regulatory requirements on buy here pay here dealers collecting their own accounts.

b. NIADA meeting with CFPB staff

Executive Vice President Steve Jordan and I had two separate meetings with staff of the CFPB. The first meeting was held with staff of the Office of Servicemember Affairs to introduce Mr. Jordan in his new capacity and to discuss issues related to military servicemembers and the car buying experience.

The second meeting was held with staff of the CFPB’s Installment and Liquidity Lending Markets and Fair Lending & Equal Opportunity divisions (including Jeff Langer, the new Assistant Director of Installment and Liquidity Lending Markets, who replaced Rick Hackett.) In this meeting, we had the opportunity to introduce the association to Mr. Langer and staff that handle fair lending issues. We discussed ongoing the ongoing debate on the CFPB’s position related to disparate impact and dealer markup, among topics. We also invited the CFPB to participate in our annual convention.

c. Subpoenas issued to BHPH dealers

We have become aware of the CFPB issuing subpoenas for information and documents from small to medium sized independent dealers. The information the CFPB requests

includes documents related to advertising materials, financial statements, policies and procedures manuals, pricing of loans, and transactions with military personnel.

**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**

a. FTC Announces Top Consumer Complaints

Last year the FTC received over 2 million consumer complaints. It recently released the top categories of consumer complaints. At the top of the list is identity theft garnering 14% of complaints followed by debt collection complaints constituting 10% of all complaints. Auto related complaints were seventh on the list.

b. Meeting with Commissioner Brill

Executive Vice President Steve Jordan and I met with FTC Commissioner Julie Brill in Washington, D.C. The purpose of the meeting was to introduce Commissioner Brill to the NIADA and to discuss generally issues of interest to the Commissioner Brill that impact the automotive industry. Commissioner Brill stated she is always concerned with consumer privacy issues. We generally discussed other topics such as spot delivery, advertising, and the Used Car Rule. NIADA expressed its appreciation to Commissioner Brill of the FTC's support of our annual convention, leadership conference, and other interactions with the Commission.

**VI. Internal Revenue Service**

a. Higher Tax Refunds

As of late February, the IRS is reporting the average tax return is \$190 greater than the same period last year, averaging \$3,211. Additionally, 15% more returns were filed as of February 20 than the same period last year.

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

### a. NHTSA Partners with Department of Transportation to Enable Vehicle-to-Vehicle Communication

The NHTSA announced last month that it was partnering with the U.S. Department of Transportation to be taking steps to enable vehicle-to-vehicle communication technology for light vehicles. The technology would allow vehicles to communicate with each other. This technology would be used to prevent crashes by exchanging information such as speed and position. The DOT believes the information would prevent a majority of two or more car crashes. The systems that NHTSA and DOT are considering would provide information to the driver who could avoid the collision – it would not automatically take control of the vehicle.

### b. NHTSA Announces Mandatory Label for Recall Mailings

Starting February 18, all manufacturers must use a distinctive label on required mailings which notify owners of recalled vehicle equipment. This requirement is aimed at helping owners easily distinguish important recall notices and avoid mistakenly discarded critical safety notices. The required Notice label can be found at: [Mandatory Notice](#)

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

No Significant Updates

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

### a. Republican Attorneys General Association

Executive Vice President Steve Jordan and I participated in the Republican Attorneys General Association meetings in Washington, D.C. We met many of the Republican State Attorneys General and introduced them to the NIADA, their state IADA, and discussed briefly issues that were relevant to our dealer members.

### b. New Mexico Attorney General

Executive Vice President Steve Jordan, former Ohio Attorney General Betty Montgomery, and I met with New Mexico Attorney General Gary King to discuss rules that General King has promulgated requiring dealers to put each used car through a comprehensive inspection before offering the vehicle for sale. We conveyed both NIADA and NMIADA's opposition to the rules and proposed sitting down with General King's staff to consider alternatives.

**c. Pending Legislation/Regulation**

**i. Washington**

1. House Bill 2757: The bill was introduced to amend 1 RCW 46.70.180 to read: “The dealer discloses to the purchaser or lessee in writing that the documentary service fee is a negotiable fee, unless the dealer exclusively offers negotiation-free vehicle pricing.”

**ii. New Mexico**

1. Senate Bill 311: S.B. 311 related to used motor vehicles and amends the Motor Vehicle Assurance Act. The bill would extend the implied warranty period and provides for an express warranty for used motor vehicles.

**iii. Connecticut:**

1. 2014 CT Regulation Tracking 4925: The proposed regulation proposed rules and regulations relating to consumer complaints against vehicle dealers and repairers.

**d. Passed Legislation/Regulation**

**i. Indiana**

1. S.B 350: The legislation makes various changes concerning the dealer services division within the Secretary of State. The legislation provides that a public agency or towing service may provide notice to a person that owns or holds a lien on a towed vehicle by a certificate of mailing, in addition to other methods.

**ii. Kentucky**

1. 2013 KY Regulation Text 20544: The Rule change adds “electronic” medium into the definition of advertising in its rules on motor vehicle advertising.

**X. Significant Case Law Updates**

**a. No Significant Activity**



1701 Pennsylvania Avenue  
Suite 300  
Washington, DC 20006  
Phone: (202) 351-6855  
Fax: (202) 351-6855  
[www.federaladvocates.com](http://www.federaladvocates.com)

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

### **MAP21 Reauthorization**

Work has begun on reauthorization of MAP-21 that will expire on September 30, 2014. We will monitor that process carefully as it was during the last reauthorization that various issues impacting the industry were addressed – recalls, NHTSA requirements, etc.

The House Subcommittee on Highways and Transit held a hearing on February 27 to receive testimony related to highway freight mobility. To study the operation and needs of the Nation's freight transportation network, the Committee on Transportation and Infrastructure convened a special panel in April 2013. The Panel on 21<sup>st</sup> Century Freight Transportation spent six months holding hearings, conducting site visits, and meeting with stakeholders for roundtable policy discussions on all aspects related to the movement of goods throughout, into, and out of the United States. After completing its fact-finding mission, all eleven Members of the Panel released a report summarizing its findings and making specific policy recommendations on ways to improve the safe and efficient movement of goods.

The Chairman of the House Committee on Transportation and Infrastructure has announced that he wants a House-passed MAP-21 reauthorization bill by the August recess.

On February 12 the Senate EPW Committee held its initial authorization hearing, "The Economic Importance of Maintaining Federal Investments in our Transportation Infrastructure." A couple of key points from the hearing:

- EPW Chairwoman Boxer hopes to have a bill drafted by April
- Stakeholders continue to agree that a longer bill (5-6 yrs) is far preferable to one of shorter length

- Ranking Member Vitter would like to see more transparency from USDOT on how funds are used.

## **Rental Cars Recall**

No additional legislative developments. On 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. 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.

## **Legislation of Interest**

### **H.R. 3193, Consumer Financial Protection Safety and Soundness Improvement Act of 2013**

Introduced by Congressman Duffy (R-WI-7) on September 26, 2013 and amends the Consumer Financial Protection Act to authorize the Chairperson of the Financial Stability Oversight Council to issue a stay of, or set aside, any regulation issued by the Consumer Financial Protection Bureau (CFPB) upon the affirmative vote of the majority of Council members (currently, two-thirds), excluding the Director of the Bureau.

Requires the Council, upon the petition of a member agency of the Council, to set aside a final regulation prescribed by the CFPB if the Council decides that such regulation is inconsistent with the safe and sound operations of U.S. financial institutions. (Currently the Council is merely authorized, upon petition, to set aside a final regulation if it would put the safety and soundness of the U.S. banking system or the stability of the U.S. financial system at risk). Repeals: (1) the prohibition against Council set-aside of a regulation after expiration of a specified time period, and (2) mandatory dismissal of a petition if the Council has not issued a decision within such time period. Requires the CFPB Director, when prescribing a rule under federal consumer financial laws, to consider its impact upon the financial safety or soundness of an insured depository institution.

Status Update: Passed the House on Feb. 11.

### **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: No change since the last report.

### **S. 1585, 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: No change 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 sponsor added to Senate bill 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.

### **Debt Ceiling**

On February 11, the House of Representatives narrowly approved a one-year extension of Federal borrowing authority without any conditions. The 221-201 vote, carried mainly by Democrats, marked a dramatic shift from past confrontational fiscal tactics culminating most recently in last October's 16-day government shutdown. It came after House Republicans rejected Speaker Boehner's latest plan to link an increase in the \$17.2 trillion borrowing cap to a repeal of planned cuts to military pensions. Democrats provided most of the "yes" votes on the debt limit increase, which was attached to a measure renaming an air traffic control center in Nashua, New Hampshire. There were 193 Democrats who voted yes versus just 28 Republicans.

The Senate voted on February 12 to approve the House-passed measure that allows the government to borrow more money to pay its bills through March 2015. The Senate vote was the last hurdle to resolving the debt ceiling issue until after the November congressional elections.