



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

---

**I. Consumer Financial Protection Bureau**

A. Director Cordray Appears before House Financial Services Committee

In recent testimony before the House Financial Services Committee, the CFPB Director stated that the CFPB will be issuing a white paper later this summer regarding use of the proxy methodology for identifying discrimination in indirect auto financing. Congressional members of both parties and industry asking for additional information on the CFPB's methodology for over a year.

Cordray also stated that the Bureau will considering the issuance of advisory opinions in appropriate cases.

B. GE Capital Settlement

The Bureau settled an enforcement action with GE Capital Bank involving deceptive and discriminatory conduct by GE Capital related to credit card add on products. The Bureau identified deceptive marketing practices in promoting these products including marketing the product as free, but the avoidance of the fee occurred in very rare circumstances. GE is also alleged to have failed to disclose consumers' ineligibility for the product. The marketers did not make it clear consumers were making a purchase as opposed to the consumer perception that they were receiving a benefit. Marketers also suggest that these products were a limited time offer when such was not the case.

Additionally, GE Capital is alleged to have engaged in discriminatory practices by offering some promotions to certain consumers but not to those who indicated they

preferred to communicate in Spanish or had a mailing address in Puerto Rico even if those consumers met the qualifications of the program.

GE Capital agreed to end deceptive marketing practices, end discriminatory credit practices, provide \$225 million in consumer relief, and pay a \$3.5 million civil penalty.

C. Mobile Financial Services

The CFPB is requesting information related to the opportunities and challenges associated with the use of mobile financial services. The Bureau wants to know how mobile technologies are impacting unbanked and underserved consumers with limited access to traditional banking systems. The comment period ends Sept. 9, 2014. We will review the request for information and make recommendations to the Board if it warrants response from NIADA.

**II. Department of Justice**

A. Settlement with GE Capital

See CFPB report.

B. Auto-Fare lawsuit

In our January 2014 report, we made reference to the lawsuit the DOJ filed against a BHPH dealer that charged the same interest rate to each customer. The Defendants filed a motion to dismiss the case, which the court just denied on grounds that the complaint states a claim upon which relief could be granted.

**III. Department of Labor**

No significant activity.

**IV. Environmental Protection Agency**

No significant activity.

**V. Federal Trade Commission**

A. Testimony on Geolocation Privacy

The FTC testified before Congress on its efforts to address the privacy concerns raised by the tracking of information about consumers' location, as well as proposed legislation to

protect the privacy of geolocation data. The FTC considers precise geolocation data as sensitive personal information.

The testimony also provided the Commission's initial views on the Location Privacy Protection Act of 2014, proposed legislation that seeks to improve the transparency of geolocation services and give consumers greater control over the collection of their geolocation information. The FTC supports the goals of the LPPA, and believes it is an important step forward in protecting consumers' sensitive geolocation information, the testimony states.

**B. Debt Collection Settlement**

The FTC settled a lawsuit against a Houston debt collection company, RTB Enterprises, Inc., which does business as Allied Data Corporation, and Raymond T. Blair, its president and sole shareholder, for illegal debt collection activities. The FTC alleged that the defendants violated the FTC Act and the Fair Debt Collection Practices Act by using false and deceptive methods to collect more than \$1.3 million in so-called "convenience fees" and "transaction fees" from consumers who authorized payments by telephone. The defendants allegedly trained their collectors to deceive consumers into believing that payments were not accepted by U.S. mail and that the fees were unavoidable.

The FTC also claimed that the collectors deceived both English and Spanish-speaking consumers by claiming to speak for attorneys, falsely threatening to sue consumers who did not pay, and using deceptive schemes to coerce consumers into paying or providing their personal information.

The defendants are required to pay a penalty of \$4 million, which will be partially suspended based on inability to pay.

**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.



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

June 30, 2014

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

### **Rental Cars/Used Cars Recall**

As previously reported, with no change since the last report, included in the President's proposed MAP-21 reauthorization bill (see separate heading below), the "Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout American Act" or the GROW AMERICA Act," is Section 4109, recall authority over rental car companies and used car dealers. While, also as previously reported, the rental car recall issue has been dormant, we were advised by the Senate Commerce Committee that some form of a rental car recall provision will be included in its portion of the MAP-21 reauthorization bill. That being the case, the Committee requested NIADA's comments on Section 4109 and a letter was submitted. Section 4109 (a) would limit the sale, lease or rental of vehicles or equipment that are subject to "notification of a defect or noncompliance about a motor vehicle or new item of replacement equipment." As drafted, the provision not only subjects rental car companies (dealerships with a rental car fleet of 5 vehicles or more) to the process currently applicable to new cars – which, we believe, was the intent of the provision – but it also goes way beyond that process by including notification of ANY defect (emphasis added) related to a motor vehicle or replacement equipment whether or not the defect is safety related. That result is achieved by deleting the reference to "motor vehicle safety" and "applicable motor vehicle safety standard" in current law. Section 4109(b) would also limit the sale or lease of used motor vehicles subject to recalls. Both provisions are problematic: the first, because it affects small rental car operations and is broad in its application as it includes non-safety related recalls; and the second, because the notification process for learning that a vehicle is subject to a recall is flawed.

### **Annual Privacy Notice Requirement**

NIADA has been monitoring legislation currently pending in the Congress – namely, House-passed H.R. 749, the "Eliminate Privacy Notice Confusion Act" by Congressman Luekemeyer

and Senate introduced S. 635, the “Privacy Notice Modernization Act of 2013 by Senator Brown – that would, in general, eliminate a costly and duplicative requirement originally passed under the Gramm-Leach-Bliley Act that all financial institutions mail their customers a copy of their privacy notice each year even if there has been no change in their privacy policy. While NIADA supports both bills in concept, our preference is for enactment of House-passed H.R. 749 given some concerns over the one addition to that bill that is included in the Senate bill.

Both bills would remove the annual privacy notice requirement if an institution has not, in any way, changed its privacy policies or procedures. The bills do not exempt any institution from an initial privacy notice, nor do they allow a loophole for an institution to avoid issuing an updated notice. Notwithstanding this, the Senate bill adds another qualifying condition for exemption - that customers be provided “access to such most recent disclosure in electronic or other form permitted by regulations prescribed under section 504.” By this addition, we suspect that the Senate bill envisions that financial institutions would post their privacy policy on their website or transmit it via email. However, while that may work for “traditional financial institutions,” some of our small dealers do not have websites and email transmittals by them may be costly, cumbersome and speculative at best. Of course, email transmittal assumes that the customer has the capability to receive them that may not always be the case. In addition, the reference to “section 504” creates a significant degree of uncertainty as that section, in part, gives the Bureau of Consumer Financial Protection and the Federal Trade Commission broad authority to issue regulations on an on-going basis, thereby, for purposes of this bill, leaving in doubt what “other form permitted by regulations” might take. Given this, the Association’s position is that subparagraph (3) of the S. 635 not be included in the final version of the bill.

On June 6, we again (April 23 was the previous meeting) met with staffs of the House and Senate Banking Committees to discuss the bills, expressing NIADA’s support and raising questions about the Senate “add-on language.” per the Association’s comment letter. In addition, the CFPB issued a proposed rule on the privacy issue. The comment period on it was just extended from Jun 12 to July 14. NAAA is preparing its comments.

### **Rockefeller Motor Vehicle Safety Act of 2014**

On June 27, Senator Rockefeller, Chairman of the Committee on Commerce, Science, and Transportation, introduced the Motor Vehicle Safety Act of 2014 (bill number not yet available) to give the National Highway Traffic Safety Administration (NHTSA) enhanced capabilities and increased resources that will enable the agency to better protect the driving public. Rockefeller is taking action after a series of tragic deaths resulted from faulty ignition switches in GM vehicles, and a wave of recent recalls from various automakers, which have highlighted gaps in the agency’s ability to meet its mission of saving lives, preventing injuries, and reducing crashes on roads. Rockefeller’s legislation is similar to H.R. 4364, the Motor Vehicle Safety Act of 2014, introduced in April 2014 by Rep. Henry Waxman (D-CA). Note also the requirement below about used car dealers and recalls. This bill could very well be included in the Committee’s MAP-21 reauthorization title.

Specifically, Rockefeller’s legislation gives NHTSA greater safety authority, including the authority to remove dangerous vehicles from the road and raise caps on civil penalties for safety

violations; increases funding for NHTSA's vehicle safety programs by authorizing appropriations for NHTSA and imposing a vehicle safety user fee on auto manufacturers; prohibits car dealers from selling used vehicles with known pending safety recalls without fixing the defect or making the consumer aware of the defect; and, promotes transparency at NHTSA by requiring public availability of early warning data, improving consumer access to the vehicle safety database, and limiting the revolving door between NHTSA and the auto industry.

## **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.

## **MAP-21: The Senate**

On May 15, the Committee on Environment and Public Works unanimously approved S.2322, the "MAP-21 Reauthorization Act" without amendment (the bill was introduced May 12, the text and summary having been previously provided). The bill would authorize spending of \$38.4 billion for FY15, then increase with inflation to \$39.2 billion for FY16, \$40 billion for FY17, \$40.8 billion for FY18, \$41.7 billion for FY19 and \$42.6 billion for FY20. That is approximately status quo funding levels plus inflation. The bill would also authorize \$400 million a year in grants for projects of national and regional significance and \$125 million a year, starting in FY16 subject to appropriation, for awards to states that show special innovation or brought projects in ahead of time and below budget. A new freight program would be authorized at \$400 million as of FY16, growing by \$400 million a year to reach \$2 billion in FY20. The bill would also maintain the low-interest TIFIA infrastructure loans at current levels, while modifying the program to help states with infrastructure banks stretch their federal highway dollars. Funding for tribal transportation would be authorized at current levels.

The legislation will still need to be merged with forthcoming titles from the Banking and Commerce Committees to address transit, rail, motor carrier and safety needs. Commerce is reported to be close on taking action on its version of the bill, perhaps as early as before the July 4<sup>th</sup> recess. Finding a way to pay for the bill falls within Senate Finance Committee's jurisdiction. Just to maintain current levels, tax writers would have to come up with about \$18 billion a year to supplement motor fuels taxes and other excise taxes collected for the Highway Trust Fund. Senate Finance Chairman Ron Wyden said that he is working with members of his tax-writing panel to come up with a plan by the end of June to rescue the Highway Trust Fund. He and Committee members met to discuss ways both to fix a short-term cash crunch as the highway account runs low this summer and address long-term revenue needs for the fund that covers road and transit spending. The Chairman said he asked Members to come up with revenue ideas so the panel can complete a bipartisan financing plan by the end of this month. That schedule would mean the Finance panel would offer its plan before Congress takes a weeklong recess around the July Fourth holiday. The timing would provide reassurance to states that Congress could complete action before a late-July deadline as the fund's cash balance shrinks. The Transportation Department has warned it could delay Trust Fund payouts to states for bills

coming due on their highway and bridge projects if cash on hand shrinks below safe levels as is now projected. State and Federal officials have warned such a funding interruption would disrupt many construction projects this summer and hurt the economy.

On June 3, the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security held a hearing titled, "Surface Transportation Reauthorization: Examining the Safety and Effectiveness of our Transportation Systems." The hearing focused on the surface transportation reauthorization and evaluation of the safety and effectiveness of rail, motor carrier, hazardous materials, and research programs currently administered through the U.S. Department of Transportation. Witnesses were Joseph C. Szabo, Administrator, Federal Railroad Administration; Anne S. Ferro, Administrator, Federal Motor Carrier Safety Administration; Cynthia L. Quarterman, Administrator, Pipelines and Hazardous Materials Safety Administration; and, Gregory D. Winfree, Assistant Secretary, Office of the Assistant Secretary for Research and Technology.

### **MAP-21: The House**

To date, there have been no substantive discussions between House Transportation and Infrastructure Repubs and Dems. Rumor has it the Repubs favor an extension of the existing program, the duration of which is still unknown. The press has been reporting a one year extension. Staff is reported to be considering a shorter one.

On June 16, members of the Panel on Public-Private Partnerships of the House Committee on Transportation and Infrastructure participated in a roundtable discussion on "Ways the Financial Community Can Invest in Infrastructure Using Public-Private Partnerships". The Panel heard from Jamison Feheley, Managing Director, J.P. Morgan; Karl Kuchel, Chief Operating Officer, Macquarie Infrastructure Partners; Thomas Osborne, Executive Director of Infrastructure, IFM Investors; Steve Howard, Director of Infrastructure Project Finance, Barclays; and Elliott Sclar, Professor of Urban Planning and International Affairs, Columbia University. Over the last several months, the Panel has held a series of roundtables exploring the use of public-private partnerships (P3s) to advance highway, transit, water, airport, and public building infrastructure projects. The Panel has also explored the use of public-private partnerships internationally, and the experience States have had in carrying out these complex arrangements.

### **MAP-21 Reauthorization: The President**

Last month, the Administration released its long-term transportation bill entitled the "Grow American Act." The bill provides:

\$199 billion to invest in our nation's highway system and road safety. The proposal will increase the amount of highway funds by an average of about 22 percent above FY 2014 enacted levels, emphasizing "Fix-it-First" policies and reforms that prioritize investments for much needed repairs and improvements to the safety of our roads and transit services, with particular attention to investments in rural and tribal areas. The proposal would also provide more than \$7 billion for the National Highway Traffic Safety Administration and Federal Motor Carrier Safety

Administration to improve safety for all users of our highways and roads, providing a benefit of \$21 for every Federal dollar used for infrastructure-related safety investments.

\$72 billion to invest in transit systems and expand transportation options. The proposal increases average transit spending by nearly 70 percent above FY 2014 enacted levels, which will enable the expansion of new projects that improve connectivity (e.g., light rail, street cars, bus rapid transit, etc.) in suburbs, fast-growing cities, small towns, and rural communities, while still maintaining existing transit systems. The bill proposes a powerful, \$5.1 billion increase in investments to address public transit's maintenance backlog to reduce bus and rail system breakdowns; create more reliable service; and stop delays that make it harder for all commuters to get to work. The proposal also includes the innovative Rapid Growth Area Transit Program, which would provide \$2 billion over four years to fast growing communities for bus rapid transit and other multimodal solutions to get ahead of the challenges caused by rapid growth.

The Administration proposes to fund the GROW AMERICA Act through a pro-growth, business tax reform, without adding to the deficit. The President's Budget outlined a proposal to dedicate \$150 billion in one-time transition revenue from pro-growth business tax reform to address the funding crisis facing surface transportation programs and increase infrastructure investment. This amount is sufficient to not only fill the current funding gap in the Highway Trust Fund, but also to increase surface transportation investment over current authorized levels by nearly \$90 billion over the next four years. When taking into account existing funding for surface transportation, this plan will result in a total of \$302 billion being invested over four years putting people back to work modernizing our transportation infrastructure. The Administration believes that a comprehensive approach to reforming business taxes can help create jobs and spur investment, while ensuring a fairer and more equitable tax system that eliminates current loopholes that reward companies for moving profits overseas and allow them to avoid paying their fair share.

### **Highway Trust Fund Status**

There has been a great deal of activity in Congress over the past few weeks on the FY'15 appropriations bills and various infrastructure authorization issues; however, the outlook for the rest of the summer session and into the fall is murky at best. Congress is in session only a limited number of days between now and the August recess that begins on August 1 and extends through September 8. Congress is scheduled to recess for the November mid-term elections on October 3. House Republicans are currently preoccupied with the fallout from House Majority Leader Eric Cantor's loss in his primary race and the subsequent House leadership elections to replace him which will take place this week. Cantor's loss and the upcoming November elections may make Members of Congress even more skittish about taking tough votes on such issues as solving the Highway Trust Fund crisis. With recent estimates showing the highway account of the Highway Trust Fund running out of money as early as mid-August, prior to the September 30 expiration of MAP-21, Congress must act on some sort of funding fix before they adjourn on August 1 for a five-week recess or critical reimbursements to the states may be substantially delayed. That gives them less than six weeks in session to come up with and pass a plan. With that limited amount of time, only a short-term fix is currently being contemplated. A longer-term solution, such as a gas tax increase, moving to a sales tax, repatriation of overseas corporate profits, a per barrel oil fee, etc., will have to wait until after the November elections, possibly in a post-election Lame Duck



session or not until next year.

## **Legislation of Interest**

### **Various Consumer Financial Protection Bureau Bills**

The House Committee on Financial Services has marked up the following bills. There are no Senate companion bills to any of them.

#### **H.R. 4383, the Bureau of Consumer Financial Protection Small Business Advisory Board Act**

Introduced by Representative Pittenger, the bill would direct the CFPB to establish a Small Business Advisory Board. The bill has 23 cosponsors.

#### **H.R. 4684, the Bureau Guidance Transparency Act**

Introduced by Representative Stutzman, the bill would require that the CFPB, in issuing any guidance, provide a public notice and comment period before issuing the guidance in final form, and must make public any studies, data, and other analysis it relied on in preparing and issuing its guidance.

**H.R. \_\_\_\_**, to place a 6-month moratorium on the authority of the Financial Stability Oversight Council to make financial stability determinations.

**H.R. 4662, the Bureau Advisory Opinion Act**, to establish an advisory opinion process for the Bureau of Consumer Financial Protection.

**H.R. 4811, the Bureau Guidance Transparency Act**, to provide for a notice and comment period before the Bureau of Consumer Financial Protection issues guidance.

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

Introduced by Congressman Duffy (R-WI-7) on September 26, 2013, passed the House on Feb. 27, 2014, received in the Senate on March 4, 2014, 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 the

prohibition against Council set-aside of a regulation after expiration of a specified time period, and 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: No change since the last report.

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

Introduced on June 27 by Congressman Cohen (D-TX) with 6 (now 11) 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: One additional cosponsor added 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**

See discussion above.

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

Introduced on May 23 by Senator Portman with 8 cosponsors (now 11) and referred to the Committee on Homeland Security and Governmental Affairs. A Subcommittee hearing was held on the bill on March 11, 2014. 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.

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 7 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 (17) 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.