



**To: National Independent Automobile Dealers Association**  
**From: Shaun K. Petersen**  
**Re: May 2014 Regulatory Update**  
**Date: June 2, 2014**

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**I. Consumer Financial Protection Bureau**

A. Investigations into banks' auto loan businesses

AutoFinance News reports that 6 auto lenders are involved in investigations/enforcement actions by the CFPB. The source indicates that three are banks and three are non-banks. Fifth Third Bank, American Honda Finance Corp, and Toyota Motor Credit confirmed in filings with the Securities and Exchange Commission that they have received requests for information from the CFPB and DOJ.

B. Larger market participant auto financing rule

As part of its semi-annual update of its rule making agenda, the Bureau disclosed that it would be proposing a rule that would define larger market participants in the auto lending industry over which the Bureau would have supervisory authority.

C. Debt Collection

As part of its semi-annual update of its rule making agenda, the Bureau disclosed that it would be engaged in "pre-rule activities" for a proposed rule covering debt collection in December 2014.

D. Spring 2014 Supervisory Highlights Report

The Bureau released its Spring 2014 Supervisory Highlights report pointing out compliance deficiencies and violation amongst the entities it supervises. The report

emphasizes a lack of compliance management systems and exceptions to certain credit standards causing a fair lending risk. The Bureau also pointed out a lack of compliance management systems posing problems for debt collectors. Specifically mentioned was a lack of oversight by management of the compliance management system, failure to monitor third party vendors, failure to have written policies and procedures, failure to monitor complaints, and failure to audit compliance.

E. Privacy Rule changes

The CFPB proposed a rule that would allow companies that limit their consumer data-sharing and meet other requirements to post their annual privacy notices online rather than delivering them individually. If a company qualified for and wants to rely on the online disclosure method, it would have to inform consumers annually about the availability of the disclosures. They could include an insert in regular consumer communication, such as a monthly billing statement, informing consumers that the annual privacy notice is available online and in paper by request at a toll-free telephone number.

The Bureau is accepting comments on the proposed rule through July 14.

**II. Department of Justice**

See report on CFPB auto finance investigations.

**III. Department of Labor**

No significant activity

**IV. Environmental Protection Agency**

No significant activity

**V. Federal Trade Commission**

A. Biweekly payments

The FTC has recently issued civil investigative demands to dealers in connection with the use of programs that offer consumers opportunities to make bi-weekly payments. The scope of the inquiries is not yet known.

B. Comments to State Legislators

The FTC staff have submitted comments to Missouri and New Jersey state legislators encouraging them to remove prohibitions in state law that require manufacturers to sell vehicles only through dealers not owned by the manufacturer. The FTC opines that the removal of those requirements will foster more competition and be better for consumers.

C. Debt Collection settlement

The FTC settled a recent enforcement action with a debt collection operation that was accused of using insults, lies, and false threats of imprisonment to collection on loans. The collection entity often owned the debt on which it was collecting. Among the tactics the FTC alleges the company used included, making false threats that consumers would be arrested and jailed, and that their children would be taken into custody; falsely claiming to be attorneys or to work hand-in-hand with local sheriff's offices; disclosing debts to consumers' employers and military superiors; and collecting bogus late fees and attorneys' fees.

D. Consumer Portfolio Services settlement

The FTC recently settled with Consumer Portfolio Services over a wide range of compliance issues involving their servicing of automobile loans. The FTC alleged that CPS charged consumers for fees they did not owe, assessed higher fees than allowed by the contract or state law, changed payment provisions through poor quality control of computer programming.

Additionally, the FTC alleged that CPS illegally revealed the existence of the debt consumers owed to friends, family, employers, etc., when collecting. CPS allegedly directed neighbors to place notes on doors asking for calls to CPS, used foul language, and overriding caller id programming during collection efforts.

The FTC claims that CPS violated the Fair Credit Report Act's Furnisher Rule, which requires companies to have procedures in place regarding the accuracy of information they give to credit bureaus. Moreover, when a consumer disputes the accuracy of that information, the company is obligated to conduct a reasonable investigation within a set time period and notify the consumer of the result. The FTC claims CPS did not reasonably investigate consumer's claims of inaccurate information.

CPS agreed to refund or adjust more than 128,000 accounts totaling \$3.5 million and forebear on collections on an additional 35,000 accounts. CPS will also pay a civil penalty of \$2 million.

**VI. Internal Revenue Service**

No significant activity

**VII. National Highway Traffic Safety Administration**

No significant activity

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

No significant activity



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May 30, 2014

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

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

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, as previously reported, the rental car recall issue has been dormant, we were recently 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 (attached) 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" and Senate introduced S. 635,

the “Privacy Notice Modernization Act of 2013 – 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 April 23, we met with staffs of the House and Senate Banking Committee to discuss the bills, expressing NIADA’s support and raising questions about the Senate “add-on language.” As a result, the Association submitted a formal comment letter (provided with last month’s report). 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.

#### **MAP-21 Reauthorization: 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. □ □

At the markup session, Senator Boxer said: "Today's passage sends a powerful signal to our colleagues and to our nation that we are serious about addressing the looming funding crisis in the Highway Trust Fund. I am proud of this strong, bipartisan bill that helps provide the certainty that all of our states and cities need to move forward with critical infrastructure and transportation projects. Thanks to all of our Members for their work on this job-creating legislation." □ □ □

Senator Vitter said: "It's important to improve our nation's roads and bridges and help provide traffic relief, so we can carry out on daily routine, like picking up the kids from practice," Vitter said. "Our nation's infrastructure needs attention and updates. Today's vote in the EPW Committee is a testament to the overwhelming bipartisan support of this urgently needed legislation." □ □ □

Senator Carper said: "Today the Environment and Public Works Committee took an important step forward on the way to passing a long-term transportation bill. I thank Chairman Boxer and Ranking Member Vitter for leading a thoughtful and bipartisan process as this committee drafted and reported out this critical piece of the legislation. I understand that the other Senate committees with jurisdiction on the transportation package are also working diligently on their respective pieces of the bill. This is particularly important for those of us who also serve on the Senate Finance Committee. We need to work in a similar bipartisan fashion to quickly come to agreement on a fiscally responsible way to fund these crucial investments in our nation's infrastructure." □ □ □

Senator Barrasso said: "Today, we made more progress in advancing legislation that will help ensure Americans continue to have a safe and working transportation system. This bill fulfills my top priorities: it's fiscally responsible and it provides new flexibility and equity for rural states like Wyoming. I'll remain focused on protecting taxpayer dollars and responding to the needs of rural Americans who rely on federal highways every day." □ □ □

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. 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. □ □ □

On May 6, the Finance Committee, with jurisdiction over the funding of MAP- 21 reauthorization and in anticipation of that effort, held a hearing on "New Routes for Funding and Financing Highways and Transit." Witnesses were Senator Boxer, Chair of the Environment and Public Works Committee; Dr. Joseph Kile, Assistant Director for Microeconomic Studies Division, Congressional Budget Office; Aubrey L. Layne, Jr., Secretary of Transportation, State of Virginia; Jayan Dhru, Managing Director, Corporate & Infrastructure Ratings, Standard & Poor's Ratings Services, New York, NY; Samara Barend, Senior Vice President and P3 Development Director, AECOM Capital, New York, NY; and, Chris Edwards, Director, Tax Policy Studies, Cato Institute. □ □

The opening statement of Chairman Wyden is as follows: □ □

“The Finance Committee is here today to discuss how to meet the country’s extraordinary need for investment in roads and highways and other infrastructure projects. □ My bottom line is that you can’t have a big-league quality or big-league economic growth of life with little-league infrastructure. The status of our roads and highways affects all Americans, from commuters to exporters to folks in rural areas who drive long distances for just about everything. And in the global competition for investment and jobs, the condition of our infrastructure is a major determinant of how the outcome plays out. By any calculus, our investments in infrastructure lag way behind our competitors’. China, for example, invests 8.5 percent of its GDP in infrastructure, and in some parts of Canada, they’re investing 10 percent. The U.S. invests only 1.7 percent. No American can be happy with the prospect that it’s easier to move goods from a Chinese factory to a Chinese port than from an American factory to an American port. That’s what’s at risk. □ □

The American Society of Civil Engineers – the trusted gurus of infrastructure – write an annual report card that grades the country’s roads and highways. In 2013, the U.S. earned a D+, not exactly nobody’s definition of success. The report found that nearly a third of our roads are in disrepair, and nearly half of highways around cities suffer from congestion. Americans waste millions of hours and more than a billion gallons of gasoline sitting in traffic every year. This has got to change. There are two priorities to consider. The first is reauthorizing and fixing the Highway Trust Fund, which feeds money into transportation projects. Unfortunately, it has less money coming in than it has going out. Fixing it in the short term will require \$10 billion to keep the fund solvent through the calendar year. Getting through fiscal year 2015 will take another \$8 billion. □ □

What happens if the authorization expires or if the fund dries up? According to one report, 6,000 projects may grind to a halt, putting many thousands of construction workers out of a job and causing “traffic migraines” across the country. Then, for the long-term, Congress needs to find a sustainable source of funds that will keep this crunch from happening again. It would be a tragic mistake to let highway funding become another stop-and-go extender like Medicare physician payments and many important tax incentives. Relying on short-term policies, emergency patches, and temporary extensions makes forward-looking strategies impossible, and when it comes to infrastructure, planning ahead is absolutely essential. □ □

Some proposals offered over the last few months, like using new tolls on existing roads or charging motorists based on the number of miles they drive, raise questions about privacy and feasibility that would need to be answered. We’re going to examine them thoroughly. It’s going to take \$100 billion just to keep the Highway Trust Fund solvent for six years. Meeting that bar will give states a chance to think ahead, and construction workers won’t have to worry about being laid off because of Washington inaction. And while Congress develops fresh, long-term policies for the trust fund, it should also consider ways to encourage Americans to use the cleanest and most efficient fuels.

But let’s face it, fixing the trust fund is just the bare minimum in terms of investment. It’s time to aim higher. That’s where the second priority comes in – getting private capital off the sidelines and into this effort. There is a whole host of innovative proposals – including some from



Senators Rockefeller, Schumer, Warner, Bennet and Blunt – designed to make that happen. And the only place you have to look to find proof that you can get private capital off the sidelines is the Build America Bonds program. □ □

The Build America Bonds program had been proposed for years and years when it was finally included in a two-year bill in 2009. In this very hearing room, Senators hoped it might generate \$5 to \$10 billion worth of infrastructure projects over its lifetime. By the time the program ended, Build America Bonds helped finance more than \$180 billion of projects in Oregon and from one end of America to the other. □ □

The lesson is clear: there are hundreds of billions of dollars in private capital sitting on the American sidelines. Surely some of that can be invested in American infrastructure. I'd like to aim higher and do everything possible to build a bipartisan coalition for policies that generate \$1 trillion in American infrastructure. □ From a purely commercial standpoint, investing that capital in critical American infrastructure projects certainly has the potential to be more profitable and improve more lives than the alternatives. □ □

It's important not to punt investments further into the future. Maintaining a good-quality road is cheaper than rebuilding a failing one – especially while interest rates are low – and it's tougher to invest in new transportation projects if the country's roads and highways are falling into disrepair. The price tag for a strong national infrastructure will only grow in the future, so it's time to get to work. □ □

This morning I also wanted to recognize the unfortunate passing of our former colleague Jim Oberstar. Jim spent his entire career working on transportation policy, first as a staffer who worked on the legislation that created the Department of Transportation in the 1960s, then while representing Minnesota's eighth district for more than three decades in the House. He was a titan of transportation policy – especially in aviation – and all who fly in America should be grateful to Jim Oberstar.” □ □

On May 7, the Committee on Commerce, Science, and Transportation held a hearing on “Surface Transportation Reauthorization: Progress, Challenges, and Next Steps”. The hearing, at which Secretary of Transportation Anthony Foxx testified, focused on the reauthorization of surface transportation programs, and a review of the Administration's surface transportation reauthorization proposal, the “GROW AMERICA Act”. In addition, the hearing highlighted the need to allocate more resources to under-funded areas of the nation's transportation system, including to programs that move freight, focus on safety, and concentrate on growing rail service. □ □

On May 22, the Subcommittee on Housing, Transportation, and Community Development of the Committee on Banking, Housing, and Urban Affairs held a hearing entitled “Bringing Our Transit Infrastructure to a State of Good Repair.” The witnesses were Dorval Carter, Jr., Chief Counsel, Federal Transit Administration; Joseph M. Casey, General Manager, Southeastern Pennsylvania Transportation Authority; Dr. Beverly A. Scott, General Manager and Chief Executive Officer, Massachusetts Bay Transportation Authority; and Gary C. Thomas, President and Executive Director, Dallas Area Rapid Transit. □ □ □

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

Chairman Shuster said he wants a bill with substantive changes to the current program. As for timing, given the challenge of dealing with the Highway Trust Fund shortfall this summer, he doesn't think a final bill gets done until the lame duck session although he plans to have a bill out in June/July and hopes to move it through the House before the election. □ □ □

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

Last month, U.S. Transportation Secretary Foxx unveiled a long-term transportation bill the Administration is sending to Congress for consideration as the House and Senate face looming deadlines to avoid the economic uncertainty and job loss that would ensue if the Highway Trust Fund runs out of money this summer. The GROW AMERICA Act reflects President Obama's vision for a four-year surface transportation reauthorization bill that would create millions of jobs and lay the foundation for long-term competitiveness, rebuilding crumbling roads and bridges while providing much-needed certainty for local and state governments and addressing the country's future needs. The following is an overview of the proposal as prepared by the Department of Transportation.

Specifically, the GROW AMERICA Act will provide --

- \$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 GROW AMERICA Act 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.
- Tools and resources to encourage regional coordination and local decisionmaking. The proposal includes policy reforms to incentivize improved regional coordination by Metropolitan Planning Organizations (MPOs), which are local communities' main voice

in transportation planning. The GROW AMERICA Act also strengthens local decision making in allocating Federal funding so that local communities can better realize their vision for improved mobility. High-performing large MPOs will be granted control of a larger portion of funds under two federal transportation programs – the Surface Transportation Program (STP) and the Transportation Alternatives Program (TAP) – and these MPOs will also receive funds through a set aside under the new Fixing and Accelerating Surface Transportation (FAST) program.

The GROW AMERICA Act will expand economic growth, and create jobs and new opportunities for Americans. The President is dedicated to enhancing opportunity for all Americans and US businesses by investing in transportation projects that better connect communities to centers of employment, education, and other critical services. The GROW AMERICA Act will -

- Support ladders of opportunity to the middle class. Today, 45 percent of Americans lack access to public transportation, limiting the options of many Americans to jobs, education and other necessities. The GROW AMERICA Act will provide improved access to safer and less expensive transportation options for millions of Americans in part by investing \$72 billion in public transportation and expanding transportation options for millions of Americans. This proposal includes \$2 billion for an innovative Rapid Growth Area Transit Program to provide new bus rapid transit and other multimodal solutions for rapidly growing regions. The GROW AMERICA Act includes \$245 million for workforce development to enhance the size, diversity, and skills of our Nation's construction and transportation workforce through collaborative partnerships with the U.S. Department of Labor, States, and non-governmental organizations.
- Provide \$10 billion for a multi-modal freight program that strengthens America's exports and trade. The U.S. transportation system moves more than 52 million tons worth nearly \$46 billion each day, or almost 40 tons of freight per person per year, and freight tonnage is expected to increase 62 percent by 2040. The GROW AMERICA Act will help improve the operation of our transportation system to move freight while making critical investments to accommodate this future growth in part through providing \$10 billion over four year to establish a new multimodal freight grant program to fund innovative rail, highway, and port projects that will improve the efficient movement of goods across the country. The GROW AMERICA Act will also give shippers and transportation providers a real seat at the table for making investment decisions and incentivizes States to collaborate and establish longterm freight strategic plans.
- Provide \$19 billion in dedicated funding for rail programs. The proposal also includes nearly \$5 of billion annually for high performance and passenger rail programs with a focus on improving the connections between key regional city pairs and high traffic corridors throughout the country.

The GROW AMERICA Act will provide more bang-for-the-buck through innovative project finance and delivery improvements. In a time of tight fiscal and budgetary constraints, the President's proposal includes a number of measures to ensure that the American public is getting most out of Federal transportation infrastructure investments that lead to better outcomes for all Americans.

The GROW AMERICA Act will --

- Utilize competitive funding to spur innovation. The proposal will provide \$5 billion over four years - an increase of more than 100 percent - for the highly successful TIGER competitive grant program and \$4 billion embedded in the highway and transit requests for a competitive grant program called Fixing and Accelerating Surface Transportation (or "FAST"). Modeled after the Department of Education's Race to the Top program, FAST will award States, Tribes, and MPOs that adopt bold, innovative strategies and best practices in transportation that would have long-term impact on all projects across the transportation programs.
- Improve project delivery and the Federal permitting and regulatory review process. The GROW AMERICA Act will build on recent efforts to expedite project approval timelines while delivering better outcomes for communities and the environment. The proposal expands on a series of successful efforts by the Administration to expedite high priority projects and identify best practices to guide future efforts without undermining bedrock environmental laws or public engagement. Not only will important projects break ground faster, but the increased level of transparency and accountability will lead to delivering better environmental outcomes, as the proposal will improve interagency coordination by advancing concurrent, rather than sequential, project reviews and will improve transparency of project reviews and timelines through online "dashboards." It will also increase flexibility for recipients to use Federal transportation funds to support environmental reviews, and help to integrate overlapping requirements.
- Incentivize cost effective investments. The proposal will strengthen the performance incentives to maintain safety and conditions of good repair, and expand research and technology activities in order to improve the productivity of our transportation systems, thereby increasing taxpayer return on investment.
- Provide \$4 billion to attract private investment in transportation infrastructure. The Transportation Infrastructure Finance and Innovation Act (TIFIA) program leverages Federal dollars by facilitating private participation in transportation projects and encouraging innovative financing mechanisms that help advance projects more quickly. The GROW AMERICA Act calls for \$4 billion in funding over four years, which is estimated to support \$40 billion in loans. The GROW America Act will strengthen the Railroad Rehabilitation and Improvement Financing (RRIF) financing Program by reducing the cost of obtaining a loan, making RRIF more accessible to short line and regional railroads. The proposal will raise the cap of Private Activity Bonds (PABs) to \$19 billion, making room for more projects considering a public-private partnership approach to be able to take advantage of this cost-saving tool.

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 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 our 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. The Administration is putting forward this pro-growth financing plan to encourage bipartisan efforts to support a visionary infrastructure plan, but is open to all ideas for how to achieve this important objective, and will work closely with Members of Congress of both parties on a solution that will invest in more job creating transportation projects.

### **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**

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

On May 29, the House Committee on Financial Services marked up the following bills. There are no Senate companion bills to any of them.

H.R. 3770, the CFPB-IG Act of 2013

Introduced by Representative Stivers, the bill would create a separate, independent inspector general for the CFPB. The CFPB currently shares an inspector general with the Federal Reserve System (Board). Requires the President within 60 days of enactment to appoint a CFPB Inspector General.

H.R. 4262, the Bureau Advisory Commission Transparency Act

Introduced by Representative Duffy, the bill would clarify that the Federal Advisory Committee Act (Pub. L. No. 92-463) applies to the CFPB.

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. 4539, the Bureau Research Transparency Act

Introduced by Representative Fitzpatrick, the bill would require that CFPB research papers made available to the public be accompanied by all studies, data, and analyses on which the paper was based.

H.R. 4604, the CFPB Data Collection Security Act

Introduced by Representative Westmoreland, the bill would require the CFPB to create an opt-out list for consumers who do not want the CFPB to collect personally identifiable information about them and to delete or destroy information about a particular consumer within a specified

period of time following collection. It further requires CFPB employees accessing personally identifiable information about consumers to hold a 'confidential' security clearance. The bill has 13 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. 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 10) 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: Two additional cosponsors 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: Two additional cosponsors added 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: Three additional cosponsors added 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.





NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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May 16, 2014

The Honorable John D. Rockefeller  
Chairman  
Senate Committee on Commerce, Science, and  
Transportation  
254 Russell Senate Office Building  
Washington, D.C 20002

The Honorable John Thune  
Ranking Member  
Senate Committee on Commerce, Science, and  
Transportation  
560 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Barbara Boxer  
Chair  
Senate Committee on Environment and Public  
Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable David Vitter  
Ranking Member  
Senate Committee on Environment and Public  
Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Members of Congress:

On behalf of the National Independent Automobile Dealers Association (NIADA), comprised of over 20,000 members and the only national trade association in the country voicing the concerns and interests of independent, used automobile dealers within the motor vehicle industry, I am writing to express our strong objections to Section 4109, Recall authority over rental car companies and used car dealers, of the President's recently proposed Federal-aid highway bill entitled the "Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act" or the "GROW AMERICA Act."

Section 4109(a) of the proposed bill 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 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 (49 USC 30120), neither a dealer nor a rental car company could not sell, lease or rent a motor vehicle if, for example, there was a malfunction with the glove compartment latch, the subject of an actual past defect recall notification.

Section 4109(b) of the proposal would limit the sale or lease of used motor vehicles. In addition to raising the same issue as above with respect to safety versus non-safety related defects, what is the rationale for this provision? Motor vehicle recall data is controlled by the automobile manufacturers, their new car dealer franchisees and the federal government. The current process of filtering this data downstream to used car dealers or rental car companies with five or less vehicles does not provide used car dealers better or greater access to this data than the consumer to whom they are selling. In other words, used car dealers and their consumers are similarly situated in their reliance on second-hand data passed down from those who control it. As such, in the MAP 21 Authorization Bill that was signed into law in July, 2012, the U.S. Department of Transportation was statutorily required within twelve months to create a universally accessible database of open recall data. This system would allow anyone to execute a vehicle specific inquiry or search by vehicle identification number (VIN) to determine if a recall exists. This has not yet happened.

Additionally, this has never been the subject of any congressional hearing or legislation. Nor has it been the subject of any regulatory process by the National Highway Traffic Safety Administration or others. There has never even been a study, by the Federal government or any highway safety entity, to determine the extent to which this is a problem, if it all, other than what we read in the news. And, in the challenging marketplace and tough economies that “mom and pop” used car dealers face, what is the cost impact of this provision on small businesses?

In addition, we wish to note that S.921, the “Raechel and Jacqueline Houck Safe Rental Car Act of 2013,” includes neither of the approaches/provisions noted above. In our letter of record regarding that bill, we raised two concerns: (1) we don’t see any way that a manufacturer would contact an auto dealer with as little as a 5 car rental fleet, which is the requirement in S.921 and the proposed “GROW AMERICA Act,” because there is no way the manufacturer would know that such an entity exists; and, (2) the recall notices that come from the manufacturer to NHTSA are oftentimes inherently lacking in detail, not timely, and in many cases because they are not VIN specific, the only reference is to a small subset of vehicles recalled by trim package and without sufficient information to know if a vehicle on the lot for sale is one of the affected in the subset. While subsection (b) of Section 4109 does address our first concern with respect to the sale or lease of used motor vehicles, it does not do so with respect to the sale, lease or rental of vehicles or equipment. In addition, our second concern is still appropriate with respect to both subsections (a) and (b). Lastly, we take issue with the criteria of “5 or more motor vehicles” in the definition of a “rental company.” What is the basis for that number? We have suggested exempting from the definition of rental company a “used car dealer with average annual receipts of \$23 million” – the timely tested and carefully crafted definition under code 441120 et al of the North American Industry Classification System (NAICS) of the U.S. Small Business Administration Small Business Size Regulations. In all, there are too many variables in the Administration’s proposed recall process to conclude that the result is a sound policy.

As a best practice, NIADA encourages our members and dealers at-large to take the extra steps necessary to identify open recall notices and to the extent they can, have them repaired before sale. However, NIADA does not currently support any legal requirement to do so per the aforementioned reasons and given the non-universal access to the data, the potential delays in repairing such recalls due to availability of parts (as some parts are often unavailable for repair, as in the current GM Cobalt recall regarding ignition switches), the fact that many consumers wish to continue buying vehicles “As-Is” and the limitations in reporting to know whether or not an open recall repair has in fact been made.

NIADA dealer members are truly concerned about consumer safety. As NIADA members, dealers subscribe to a strict Code of Ethics that lends itself to taking care of their customers now and in the future, offering better products, services and buying experiences. While our Association supports every effort to ensure the safety of the motor vehicles our dealers sell, we believe the Administration’s proposal is at best an ill-conceived rush to judgment.

At your service,



Steve Jordan  
Executive Vice President  
NIADA