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To: NAAA  
From: Sante Esposito  
Subject: January Monthly Report

### **Administration Staff**

#### *White House Staff*

RNC chief of staff Katie Walsh as deputy chief of staff.  
Rick Dearborn, former chief of staff to Sen. Jeff Sessions(R-Ala.), as deputy chief of staff for legislative, intergovernmental affairs and implementation.  
Joe Hagin as deputy chief of staff for operations.  
Former "Apprentice" contestant Omarosa Manigault as director of communications for the office of public liaison.  
Private security director Keith Schiller as deputy assistant to the president and director of Oval Office operations.  
Marc Short as director of legislative affairs.  
Josh Pitcock as the vice president's chief of staff.  
Former Pence aide Jen Pavlik as his deputy chief of staff.  
Bill Stepien, the New Jersey Gov. Chris Christie aide ousted in the Bridgewater scandal, as White House political director.  
John DeStefano as director of presidential personnel.  
George Gigicos as director of advance.  
Jessica Ditto as deputy communications director.  
Raj Shah as deputy communications director and research director.  
John McEntee as special assistant and personal aide to the president.

(Note: the individuals listed below for the various agencies have been identified as those who are either deciding staffing for key sub-level positions and/or will themselves be filling those positions)

#### *Department of Justice*

Zina Bash, Doctors' Hospital at Renaissance

Michael Battle, Barnes & Thornburg LLP  
Brian Benczkowski, Kirkland & Ellis LLP  
James Burnham, Jones Day  
Stefani Carter, Stefani Carter & Associates, LLC  
William Cleveland, City of Alexandria Public Schools  
Andrew Davis, Gibson, Dunn & Crutcher LLP  
Steven Engel, Dechert LLP  
Lizette Benedi Herraiz, Strayer University  
David Higbee, Hunton & Williams LLP  
Greg Katsas, Jones Day  
J. Patrick Rowan, McGuireWoods LLP  
Jessie Liu, Morrison & Foerster LLP  
Nicholas Matich, Kirkland & Ellis LLP  
F Chad Mizelle, Gibson, Dunn & Crutcher LLP  
John Moran, Kirkland & Ellis LLP  
Edmund Searby, BakerHostetler  
Ronald Tenpas, Morgan, Lewis & Bockius LLP  
Thomas Wheeler, Frost Brown Todd, LLC

*Federal Communications Commission*

Jeff Eisenach, NERA Economic Consulting  
Mark Jamison, University of Florida  
Roslyn Layton, Aalborg University  
David Morken, [Bandwidth.com](http://Bandwidth.com), Inc.  
Carolyn Roddy, Law Office of Carolyn Tatum Roddy, P.C.

*Federal Trade Commission*

Paul Atkins, Patomak Global Partners LLC  
Robert Barker, Law Office of Robert Barker, P.C.  
Jeffrey Dinwoodie, Davis Polk & Wardwell LLP  
Tad Lipsky, Latham & Watkins LLP  
Chelsea Pizzola, Committee on Capital Markets Regulation (Formerly)  
Alex Pollock, R Street Institute

*Department of Labor*

Mark Cowan, The Spectrum Group  
Eric Dreiband, Jones Day  
Diana Furchtgott-Roth, Manhattan Institute for Policy Research  
Richard Manning, Americans for Limited Government  
Nathan Mehrens, Americans for Limited Government Research Foundation  
Loren Smith, Capital Alpha Partners LLC  
F. Vincent Vernuccio III, Mackinac Center for Public Policy  
Mark Zelden, CRC Global Solutions

*Department of Transportation*

Nancy Butler, AECOM (Retired)  
Karen Czarnecki, Mercatus Center at George Mason University  
Bo Denysyk, Global USA Inc.  
Daniel Elwell, Elwell & Associates LLC  
T. Finch Fulton, VOX Global  
Marcus Lemon, Polsinelli PC  
Brigham McCown, Kilgore McCown, PLLC  
Shirley Ybarra, Reason Foundation (Retired)

*Financial Stability Oversight Council*

Kyle Hauptman, Main Street Growth Project  
Julie B. Lindsay, Citigroup Inc.  
Alex Pollock, R Street Institute

**Recalls**

As previously reported, in anticipation of that and possible action next year by the likes of Senators Blumenthal, McCaskill and possibly others, NADA has drafted a fallback bill to hold in “the back pocket” if and when the opposition tries something. The bill would require dealers to disclose pending recalls prior to sale. Auctions would be exempt.

**Reforming CFPB Indirect Auto Financing Guidance Act**

Senator Moran, the sponsor of the Senate bill last Congress, is not on the Banking Committee this Congress. Action on the issue is pending guidance from Chairman Hensarling and any action taken by the Administration with respect to the CFPB.

To review, on September 9, Hensarling introduced H.R.5983, “The Financial CHOICE Act,” with “CHOICE” standing for “Creating Hope and Opportunity for Investors, Consumers and Entrepreneur.” included the following series of CFPB reforms:

- A change in the CFPB’s name to the “Consumer Financial Opportunity Commission,” with the CFOC assigned the dual mission of consumer protection and competitive markets and with CFOC rules to be subject to a cost-benefit analysis performed by an Office of Economic Analysis
- Replacement of the current single director with a bipartisan, five-member commission that is subject to the appropriations process
- Establishment of an independent, Senate-confirmed Inspector General (currently the CFPB shares an Inspector General with the Federal Reserve)
- Requirement for the CFOC to obtain permission before collecting personally identifiable consumer information
- Repeal of the CFPB’s authority to prohibit consumer financial services or products it deems “abusive” and its authority to prohibit the use of arbitration agreements

- Repeal of the CFPB's indirect auto lending guidance, per the House-passed bill on the issue and the Moran companion bill

## **CFPB Cordray**

Word is he'll be fired unless he resigns. Hearing the possibility of former Congressman Randy Neugebauer (R-TX-19th) who cosponsored our bill and spoke in strong support of it. He had a meeting with Trump in NY.

### Latest Press Reports:

(1) Mnuchin said he thinks it's worth keeping the Consumer Financial Protection Bureau, the watchdog inspired by Senator Elizabeth Warren that has taken on big banks like Wells Fargo(WFC). By comparison, legislation introduced by the GOP would kill the CFPB and some Republicans want Trump to fire its director.

(2) One of President-elect Donald Trump's first acts in the White House should be firing Consumer Financial Protection Bureau Director Richard Cordray, a pair of Republican Senators argued in a letter (<http://www.sasse.senate.gov/public/index.cfm/press-releases?ID=F7DBD9EB-1B73-4F72-B15B-8B6BC80BBEE2>) on Monday night. The lawmakers believe the CFPB, which has taken on big banks like Wells Fargo as well as shady payday lenders, has become too powerful since its 2011 inception.

Sasse and Senator Mike Lee of Utah argued that Cordray's tenure has been "disastrous" because the CFPB has "pursued costly regulatory policies" that have hurt community banks and credit unions. The Republicans also believe the CFPB's single-director structure is "unconstitutional" -- a belief backed up by a federal court ruling in October. However, it's not exactly clear if Trump will have the authority under current law to fire Cordray, whose term doesn't expire until July 2018. Dodd-Frank's strict language allows the president to remove the CFPB director only for cause.

"Cordray will probably sue to stay on. Let him sue. It will be an exciting battle," said John Berlau, a senior fellow at the libertarian Competitive Enterprise Institute, who also wants Trump to remove Cordray. The CFPB declined to comment on the GOP letter. The CFPB recently said that Cordray "has no plans to step down" and noted he was confirmed in 2013 by a bipartisan group of 66 senators. That confirmation followed President Obama's controversial recess appointment of Cordray in 2012.

Steven Mnuchin, Trump's pick as treasury secretary, declined through a spokeswoman to comment on "any potential Treasury policies or actions" until after his confirmation hearing. The back-and-forth over Cordray is the latest evidence that the CFPB, the consumer watchdog conceived by Warren, is under siege following the election.

Trump has promised to roll back regulation broadly, while Republicans have taken specific aim at the CFPB. GOP proposals have called for everything from wiping out the CFPB entirely to yanking its funding or replacing its director with a bipartisan board. Defenders of the CFPB

argue that efforts to defang the regulator are unwise.

Patricia McCoy, a Boston College Law School professor who oversaw CFPB mortgage policy in 2011, said the bureau has been "remarkably successful" under Cordray. She pointed to the CFPB's record-setting \$100 million fine against Wells Fargo last September in the fake account fiasco. Warren didn't respond to a request for comment on the GOP letter. The Massachusetts Senator previously told CNNMoney Republicans and big banks want to "strangle" the CFPB because it's proven to be a strong consumer watchdog.

Senator Sherrod Brown, the leading Democrat on the Senate Banking Committee, said in a statement that "firing Cordray and abolishing" the CFPB would "shatter" Trump's promise to hold Wall Street accountable. Brown praised the CFPB's ability to protect Americans who have been "ripped off" by financial institutions.

But some Republicans feel the CFPB doesn't have enough oversight. Lee and Sasse called the CFPB the "single-most egregious example" of a "headless fourth branch" of independent agencies unaccountable to the public or the president. They pointed to how the CFPB's decision-making authority rests on one person who is removable by the president only for cause. The Senators cited the October federal court decision that ruled the CFPB is "unconstitutionally structured." The CFPB has appealed the ruling in an effort to get it reversed.

### **House Auto Caucus**

Have confirmed that Congressman Mike Kelly (R-PA-3), via his staffer Brendan Fulmer, and Congresswoman Marcy Kaptur (D-OH-9), via her staffer Jenny Perrino, will continue as Co-chairs. Understand that the Caucus has refiled its required organizational paperwork and is starting to recruit new members.

### **Senate Auto Caucus**

Have confirmed the Senator Rob Portman (R-OH), via his staffer Sam Mulopulos, and Senator Sherrod Brown (D-OH), via his staffer Nora Todd, will continue as Co-chairs for this Congress. No events are planned at this time.

### **FY17 Congressional Budget Resolution**

On Jan. 13, the Congress passed the FY17 budget resolution. Note: the budget resolution does not have the force and effect of law. The congressional budget is adopted in the form of a concurrent resolution which means that a final budget must be agreed upon by both Houses but it does not go to the President for approval or veto. What it does do is impose upon the Congress decisions that will be made regarding appropriations or major policies through enactment of subsequent legislation.

The primary purpose of the budget resolution is to set overall spending levels for the next fiscal year. The entire Federal budget is broken down into 20 major categories (subject areas). The budget resolution assumes a dollar amount for each category. Within each category are specific programs. Dollar amount for each are NOT included in the budget resolution and oftentimes are

not available outside the Budget Committees. Sometimes the budget resolution will include narratives on policy issues and/or an explanatory report that addresses various policy issues.

There was no report to accompany S.Con Res 3 and no narrative language within it re Dodd-Frank, the CFPB, etc. It did set overall level of spending for Function 800, General Government, which includes Dodd-Frank programs at \$25.5B, leaving it up to the Appropriations Committee to decide how to allocate that among its various general government programs.

Of note, the House Budget Resolution of March 23,2016 (H.Con Res.125) did include the following regarding Dodd-Frank, etc.

"Dodd-Frank (Public Law 111–203) alone has resulted in more than \$39.3 billion in regulatory compliance costs and has imposed as much as 76.6 million hours of proposed and final regulatory compliance paperwork on job creators. Dodd-Frank has restricted the ability of financial institutions, both large and small, to effectively serve businesses and families with access to credit, loans, and other services. This budget repeals the worst provisions of Dodd-Frank that are holding back economic growth and putting taxpayer dollars at risk by increasing the risk of future financial bailouts. This budget repeals the Consumer Financial Protection Bureau (CFPB) that was created under Dodd-Frank. History shows that agencies shielded from accountability are prone to abuse their authority, and the CFPB is no exception. The CFPB operates off-budget with little oversight from Congress or the American people. It has an irresponsible level of authority to write far-reaching rules that have the potential to negatively affect access to credit for millions of Americans."

While it is the Senate budget resolution version that was adopted by the House, the Senate Budget Committee staff confirms that its General Government allocation assumes the policy position of the House Budget Committee as quoted above.

### **CFPB/FY17 Appropriations Process**

Prior to adjourning, the Congress passed a "clean" Continuing Resolution funding the government until April 28, 2017 (the original proposed date was March 31) at FY16 levels. By "clean," there were no new major policy issues included (except for Zika and natural disaster funding). Thus, the following provisions intended to curb the CFPB's authority are on hold in the House-passed FY17 Financial Services and General Government Appropriations bill pending final resolution of the appropriations process in by April.

A provision under which, effective October 1, 2017, the CFPB would be funded pursuant to the annual congressional appropriations process rather than through transfers from the Federal Reserve as currently provided by Dodd-Frank. During FY 2017 (October 1, 2016 through September 30, 2017), when the CFPB requests transfers from the Fed, it must notify various House committees and include in the notice the amount of the funds requested, an explanation of how the funds will be obligated, and a statement regarding why the funds are necessary to protect consumers. In addition, no later than two weeks after the end of each quarter of every fiscal year, the CFPB must provide the same House committees with a report that includes certain information such as the obligations made during the previous quarter and the actions

taken to achieve the goals, objectives, and performance measures of each office.

A provision under which the CFPB's leadership structure would be changed from a single Director to a five-member Board of Directors appointed by the President.

The bill also includes a provision that states none of the CFPB's funding "may be used to regulate pre-dispute arbitration agreements...and any regulation finalized by the Bureau to regulate pre-dispute arbitration agreements shall have no legal force or effect until the requirements regarding pre-dispute arbitration specified in the report accompanying the bill under the heading "Bureau of Consumer Financial Protection" are fulfilled." The Committee's press release about the bill states that it "requires the CFPB to study the use of pre-dispute arbitration prior to issuing regulations." Since the CFPB has already issued its "final" arbitration study, the bill would require the CFPB to conduct a further study before a final rule could become effective. On May 5, 2016, the CFPB issued a proposed rule that would prohibit covered providers of certain consumer financial products and services from using an agreement with a consumer that provides for arbitration of any future dispute between the parties to bar the consumer from filing or participating in a class action with respect to the covered consumer financial product or service. The proposed rule would also require a covered provider that is involved in an individual arbitration pursuant to a pre-dispute arbitration agreement to submit specified arbitral records to the CFPB. In the July 11 meetings, this was NIADA's primary focus issue, for which it sought support for the House bill.

The Committee also adopted a bipartisan amendment to the bill that would block the CFPB from finalizing or enforcing a rule regulating payday lending until the CFPB submits a detailed report on the consumer impact to Congress and identifies existing credit products available to replace the current sources of short-term, small dollar credit. The amendment, which was sponsored by Republican Congressman Steven Palazzo and Democratic Congressman Henry Cuellar, was adopted by the Committee in a 30-18 vote. On June 2, 2016, the CFPB's proposed rule covered payday and auto title loans, deposit advance products, and certain high-rate installment and open-end loans.

None of the above provisions are included in the Senate's version of the FY17 Financial Services Appropriations Bill.

### **Recent CFPB Bills**

Last Congress Republican Congressman Matt Salmon introduced a bill, the "CFPB Data Accountability Act" (H.R. 5413), with one cosponsor, that would impose requirements on how the CFPB handles consumer complaints.

The requirements include the following: (1) consumer complaint information could only be presented on the CFPB's website in an aggregated format, (2) complaint information included in such aggregated information would have to be verified if the complaint alleges a violation of a law, regulation, or contractual agreement, and (3) complaint information about a particular consumer financial product or service could only be made publicly available on the CFPB's website if the information is accompanied by "statistics on how many consumer complaints the

Bureau receives with respect to the particular consumer financial product or service compared to the total number of consumers making use of such consumer financial product or service.”

We will continue to monitor regarding possible introduction in the new Congress.

### **“Competition” Vehicles**

Note: included for informational purposes.

Also last Congress the Association, in conjunction with NADA, the Specialty Equipment Market Association (SEMA), Harley Davidson, and others, is worked in support of enactment of H.R. 4715, “Recognizing the Protection of Motorsports Act of 2106,” introduced on March 7 by Congressman Patrick Henry (R-NC-10) with 57 (now 120) bipartisan cosponsors as of this writing, and its Senate companion bill, S.2659, introduced on March 9 by Senator Richard Burr (R-NC) with 9 (now 28) bipartisan cosponsors as of this writing. The two bills are a result of a July 2015 rule issued by the U.S. Environmental Protection Agency that pursuant to the Clean Air Act banned the conversion of street cars into race cars solely for competition if the vehicle no longer remains in its certified configuration for emissions purposes. No one knew about this provision because it was buried in a rule that had no rational relation to that subject matter. The Association et al, including several state AG’s, opposed the rule for multiple reasons, including a flawed process. As a result, EPA pulled that part of the rule. However, EPA continues to assert authority under the Clean Air Act to regulate modification of vehicles for use in competition. This means that those converting and racing competition vehicles, and the parts and services industries that support them, do so under new EPA policy that considers the activity illegal. HR 4715 and S 2659 would clarify that such activity is legal and beyond EPA’s reach.

We will continue to monitor regarding possible introduction in the new Congress.

### **Military Pay Allotment**

Note: included for informational purposes only.

To review, on April 15, Dave Giachetti, Professional Staff Member, House Armed Services Committee, informed NIADA that they have met with the DOD regarding the military pay allotment issues and at this time “do not anticipate a change.” However, he urged that NIADA monitor the situation and keep a record of any issue/problems to report back to the Committee for future consideration.

### **Marketplace and Internet Tax Fairness Act**

Note: included for informational purposes only.

Last Congress Congressman Bob Goodlatte (R-VA-6), Chairman of the House Judiciary Committee, and Congresswoman Anna Eshoo (D-CA-18) developed a discussion draft bill on the remote sales tax issue. Per efforts of the Association, the bill specifies that states may not

impose use tax on a purchaser who paid sales tax at the origin rate at the time of purchase. It specifically exempts aircraft, vehicles, vessels and business purchases. These are all cases in which states currently collect a use tax either when the vehicle is registered or because businesses pay their use tax. As a general rule, where states are successfully collecting a use tax today, the bill preserves the status. A summary of the text refers to the exemption as preventing “double taxation.” Of interest is H.R.2775, Remote Transactions Parity Act of 2015, was introduced by Congressman Jason Chaffetz (R-UT-3) and has 65 cosponsors. This bill authorizes both member states under the Streamlined Sales and Use Tax Agreement and states that have not adopted the Agreement (the multistate agreement for the administration and collection of sales and use taxes adopted on November 12, 2002) to require remote sellers (i.e., sellers who make remote sales in a state without a physical presence) to collect and remit sales and use taxes with respect to remote sales sourced to such states. States that have not adopted the Agreement must show that they have adopted and implemented minimum simplification requirements for the administration of sales and use taxes in order to collect such taxes. Such requirements include: (1) the designation of a single state entity responsible for all state and local sales and tax administration, return processing, and audits of remote sales; (2) a single audit of a remote seller for all taxing jurisdictions in the state; (3) direct contact with a certified software provider utilized by the remote seller in conducting an audit; (4) a single sales and use tax return for use by remote sellers that is filed with a single entity responsible for tax administration; (5) a uniform sales and use tax base; and (6) sourcing of all remote sales in compliance with criteria established by this Act. This bill expressly prohibits a state from requiring a remote seller to file sales and use tax returns any more frequently than is required for non-remote sellers. Additionally, remote sellers whose gross annual receipts are less than \$5 million are exempt from audits unless there is a reasonable suspicion of intentional misrepresentation or fraud. For the first three years after the effective date of this Act, the requirement for remote sellers to collect and remit sales and use taxes is limited to remote sellers whose gross annual receipts exceed a certain level (i.e., \$10 million in the first year, \$5 million in the second year, and \$1 million in the third year) and who utilize an electronic marketplace for making sales to the public. After the third year after the effective date of this Act, there is no exemption for remote sellers to collect and remit such taxes. The bill specifies limitations on the applicability of this Act, including by providing that nothing in this Act shall be construed as: (1) subjecting a remote seller to any type of tax other than sales and use taxes, or (2) enlarging or reducing the authority of a state to impose such taxes. The bill suspends the authority of a state to collect sales and use taxes in the first year after the effective date of this Act and between October 1 and December 31 of such first year. The bill also prohibits a state from exercising any authority under this Act unless it: (1) provides certification procedures for persons to be approved as certified software providers, (2) refrains from denying or revoking certification to a software provider without a reasonable basis, (3) has certified multiple national certified software providers and such certifications are in effect, and (4) provides compensation for certified software providers. S.698, the Marketplace Fairness Act of 2015, introduced by Senator Mike Enzi (R-WY), is the companion bill. It was introduced on March 10 by and has 22 cosponsors. The bill was referred to the Finance Committee. It authorizes each member state under the Streamlined Sales and Use Tax Agreement (the multistate agreement for the administration and collection of sales and use taxes adopted on November 12, 2002) to require all sellers not qualifying for a small-seller exception (applicable to sellers with annual gross receipts in total U.S. remote sales not exceeding \$1 million) to collect and remit sales and use taxes with respect to remote sales under

provisions of the Agreement, but only if such Agreement includes minimum simplification requirements relating to the administration of the tax, audits, and streamlined filing. Defines "remote sale" as a sale of goods or services into a state in which the seller would not legally be required to pay, collect, or remit state or local sales and use taxes unless provided by this Act. Prohibits states from beginning the exercise of the authority granted by this Act for a specified period after enactment.

We will continue to monitor regarding possible developments in the new Congress.

### **Bill Tracking**

**Note the new format per the change in format by the Congress for the listing of bills. More information on each bill will be provided when it becomes available on the official site.**

S.105 — 115th Congress (2017-2018)

**A bill to amend the Consumer Financial Protection Act of 2010 to transition the Bureau of Consumer Financial Protection to a 5-member board of directors.**

**Sponsor:** Sen. Fischer, Deb [R-NE] (Introduced 01/11/2017) **Cosponsors:** (2)

**Committees:** Senate - Banking, Housing, and Urban Affairs

**Latest Action:** 01/11/2017 Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.