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

Rental Cars Recall

No additional legislative developments. On Tuesday, July 30, the Senate Commerce Committee reported S. 921, the rental car recall bill without amendment with the understanding that the Committee would continue working with the stakeholders. To review, NIADA sent opposition letters to key Members of the Committee raising various concerns about the bill and advocating for inclusion of the NIADA/NADA amendment. In addition, NIADA surveyed its membership to get a better assessment of member rental car operations and the bills impact. No House bill introduced to date. Last Congress, Congresswoman Capps (D-CA) introduced a companion bill.

Auction Sales

We continue to report on this issue in recognition of its importance and the possibility of congressional action at some point. However, to date there have been no further developments either from the Hill or between the industry and law enforcement.

CFPB Auto Lending

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

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

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

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

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

H.R. 749, Eliminate Privacy Notice Confusion Act

This was H.R. 5817 that was introduced by Congresswoman Luetkemeyer last Congress and passed the House. He reintroduced it in the new Congress on February 15 and the bill passed the House (with 73 cosponsors) on March 12 without amendment. On March 13, it was referred to the Senate Committee on Banking, Housing, and Urban Affairs. The bill amends the Gramm-Leach-Bliley Act to exempt from its annual privacy policy notice requirement any financial institution which: (1) provides nonpublic personal information only in accordance with specified requirements, and (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from those disclosed in the most recent disclosure sent to consumers. On March 21, Senator Brown (D-OH) introduced companion bill S.635, the Privacy Notice Modernization Act of 2013. With 20 cosponsors (now 35), the bill was also referred to the Committee on Banking, Housing, and Urban Affairs.

Status Update: Six additional sponsors added to S.635 since the last report.

S.1029, the Regulatory Accountability Act of 2013

Introduced on May 23 by Senator Portman with 8 cosponsors (now 9) and referred to the Committee on Homeland Security and Governmental Affairs. The bill amends the Federal regulatory process by specifying issues agency must consider in a rulemaking; various notice requirements for major and high-impact rules; public comment and hearing procedures; judicial review; and, final rulemaking. Last Congress, the Senator introduced a similar bill – S.3468, the “Independent Agency Regulatory Analysis Act of 2012.”

Status Update: No change since the last report.

H.R. 1663, Promoting Automotive Repair, Trade and Sales Act of 2013 (PARTS Act)

Introduced on April 23 by Congressman Issa (CA-49) on a bipartisan basis with 4 cosponsors and referred on June 14 to the Judiciary Subcommittee of jurisdiction. The bill makes it not an act of infringement, with respect to a design patent that claims a component part of a motor vehicle as originally manufactured, to: (1) make, test, or offer to sell within the United States, or import into the United States, any article of manufacture that is similar or the same in appearance to the component part claimed in such design patent if the purpose of such article is for the repair of a motor vehicle to restore its appearance to as originally manufactured; and (2) use or sell within the United States any such same or similar articles for such restorations more than 30 months after the claimed component part is first offered for public sale as part of a motor vehicle in any country. Defines "component part" as a component part of the exterior of a motor vehicle only (such as a hood, fender, tail light, side mirror, or quarter panel), excluding an inflatable restraint system or other component part located in the interior of a motor vehicle. Specifies that an offer to sell include any marketing of an article of manufacture to prospective purchasers or users and any pre-sale distribution. Applies this Act to any patent issued, or application filed, before, on, or after the effective date of this Act. Also on April 23 Senator Whitehouse (RI) introduced on a bipartisan basis the identical bill (S.780) with 2 cosponsors. The bill was referred the same day to the Judiciary Committee. NIADA reviewed the legislation and determined at this point not to lend its name in support. We will continue to monitor further developments.

Status Update: No change since the last report.

H.R.2414, the Black Box Privacy Protection Act

On June 18, Congressman Capuano (MA-7) introduced H.R.2414, the Black Box Privacy protection Act with 10 (13) cosponsors. On July 15, the bill was referred to the Homeland Security Committee Subcommittee. The bill amends the Automobile Information

Disclosure Act to require manufacturers of new automobiles to disclose on the information label affixed to the window of the automobile: (1) the presence and location of an event data recorder (commonly referred to as a "black box"), (2) the type of information recorded and how such information is recorded, and (3) that the recording may be used in a law enforcement proceeding. Sets forth similar requirements for motorcycle manufacturers. Defines "event data recorder" as any device or means of technology installed in an automobile that records information such as automobile or motorcycle speed, seatbelt use, application of brakes, or other information pertinent to the operation of the automobile or motorcycle. Prohibits the manufacture, sale, offering for sale, or import into the United States of an automobile manufactured after 2015 (bearing a model year of 2016 or later) that is equipped with an event data recorder, unless the consumer can control the recording of information. Requires the event data recorder in an automobile or motorcycle, and any data recorded, be considered the property of the owner of the automobile or motorcycle. Makes the retrieval or downloading of recorded data by any other person unlawful, except: (1) with the owner's consent, (2) in response to a court order, or (3) by a dealer or automotive technician to service the vehicle. Requires certain violations to be treated as unfair or deceptive acts or practices under the Federal Trade Commission Act.

Status Update: No change since the last report.