

Q2 Auto Dealer Policy Landscape



Industry Headliner of the Month:

The FTC announced a record-setting \$10 million settlement following complaints that a large dealership group engaged in discriminatory loan practices and used a host of deceptive tactics related to hidden fees for add-ons like service contracts, gap insurance, and maintenance plans. This exemplifies the FTC's significant focus on aggressive enforcement, including an anti-discrimination agenda and ensuring cost transparency in the industry.



What's Happening in Washington:

Top Democrats in Congress continue to try to resume negotiations on the President's stalled Build Back Better Act. Provisions on the table for potential consideration include a host of tax hikes on corporations and wealthy individuals, an aggressive clean energy and climate package, and drug pricing reforms. Inflation remains a concern among consumers and will be top of mind as Congress weighs any legislation. Other areas of focus in Washington includes China competition legislation, Russia's invasion of Ukraine, and confirming the President's nominees for key regulatory positions, including at the FTC, Federal Reserve, and SEC.

FTC Safeguards Rule Reminder

In the wake of the FTC's [announcement](#) in October 2021 about updating the Safeguards Rule, there are a few things to keep in mind:

- **The new rule is effective as of January 10, and dealers must comply by December 9, 2022. See the FTC's guidance for auto dealers [here](#).**
- Unlike the previous rule which provided some flexibility for organizations, the updated rule requires compliance from all financial institutions and dealerships regardless of size, systems, customer base, or the types or scope of data they maintain.
- Unique to the industry, auto dealers must ensure any dealership vendors with which they share information are fully compliant.
Note: This will require dealers to audit their vendors or face a potential penalty or fine.
- Regulators and advisors have recommended auto dealers begin to take steps to prepare for compliance and ensure a manageable process, including practices like:
 - Taking inventory and assessing capabilities of current security controls and information systems
 - Implementing certain security mechanisms (i.e., data encryption, an incident response plan, multi-factor authentication); and
 - Identifying an internal or external advisor to understand and manage the compliance process.**Note: The Rule will ultimately require dealerships to designate a "qualified individual" to oversee information security after it goes into effect.**

Senate Advances Bedoya Nomination to FTC

After months of gridlock, Senate Democrats narrowly moved forward Alvaro Bedoya's nomination to be an FTC Commissioner by a 51-50 vote, with Vice President Harris breaking the party-line tie. Bedoya is known for his hawkish views on privacy enforcement.

- **What happens now?** Given widespread Republican opposition, Bedoya will face an additional vote in the Senate which will require support from the full Democratic caucus. He is expected to be confirmed in the coming weeks after the Democrats are rejoined by some colleagues recovering from COVID.
- **Why does this matter?** Bedoya's confirmation will provide the FTC with a Democratic majority – it currently sits in a 2-2 Republican and Democratic split, which limits Chair Khan's ability to move forward with any controversial rulemakings. Bedoya's confirmation will enable the agency to pursue more aggressive oversight and enforcement over the businesses it regulates.

Congress Weighs Tax Relief for Auto Dealers

Reps. Dan Kildee (D-MI) and Jodey Arrington (R-TX) recently introduced the Supply Chain Disruptions Relief Act to provide tax relief to auto dealers that use the last-in, first-out (LIFO) accounting method and are struggling to replace inventories due to supply chain issues. Sens. Sherrod Brown (D-OH) and Tim Scott (R-SC) introduced companion legislation in the Senate.

- **Why was the bill introduced?** Many auto dealers using the LIFO method are facing steep, unanticipated tax liability due to unforeseen inventory shortages. The Treasury Department has called for additional authority from Congress to grant tax relief for affected dealerships.
- **What does the bill do?** Allows dealerships to choose to wait until as late as 2025 for their inventory to be replaced in order to determine the income attributable to the sale of inventory during 2020 or 2021.
- **Will the bill pass into law?** Prospects remain unclear. The legislation is bipartisan, which increases its chances of advancing, but it remains in very early stages. The bill will need to pass through both the House and Senate, which could prove challenging given various other priorities facing Congress at this time. Sponsors of the legislation have signaled interest in trying to attach the legislation to another proposal related to semiconductors that is expected to advance this summer.

CFPB Moves

The Consumer Financial Protection Bureau (CFPB) [announced](#) that they will “examine” non-bank entities. Insurers, generally, were “carved out” of the CFPB’s jurisdiction since they are regulated heavily at the state level. However, the CFPB may decide to examine Service Contract providers since some states do not consider these products “insurance.”

The CFPB [announced](#) it is taking action against what it deems as recent concerning activity by auto lenders and servicers related to wrongful repossessions and “sloppy” loan servicing. While the CFPB’s enforcement focus is not on the dealer side, the agency points to the rising cost of used autos generally as the impetus behind the issue.

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CISA Issues Cybersecurity Guidelines for Companies

The Cybersecurity & Infrastructure Security Agency (CISA) issued two cyber-related guidelines this month. The first includes cyber incident reporting guidelines for organizations in the interim of a rulemaking the agency is undergoing. See more [here](#).

Note: The expected rule would require organizations to report to CISA within 72 hours of a material cyber incident, breach, or ransom payment.

The second guideline outlines cyber-related threats posed by Russian bad actors and identifies immediate actions companies should take to mitigate current cyber threats from Russia. See more [here](#).

Notable Events & Statements

- **March 28th** – Senate Commerce Committee held a hearing entitled “The Future of Automotive Innovation and Semiconductor Chips.” While the primary focus was on the reshoring of semiconductor chips, members discussed opportunities for Congress to facilitate innovation in the auto industry including through electrification, autonomous vehicles, and improved vehicle safety.
- **March 29th** – President Biden’s [Statement](#) on Electric Vehicle and Battery Manufacturing Investments in North Carolina.
- **April 11th** – FTC Chair Lina Khan’s [Remarks](#) before the Global Privacy Summit. Khan reiterates the FTC’s focus on consumer data privacy and aggressive oversight over how companies use consumer data. Khan said despite the absence of a federal data privacy law, the FTC will continue to serve as the “de facto enforcer in this domain.”
- **April 26th and 27th** – CFPB Director Rohit Chopra appeared before the Senate Banking Committee and House Financial Services Committee for semi-annual CFPB oversight hearings. Chopra was pressed by lawmakers on his rulemaking agenda for the coming months, and ongoing workstreams at the agency. There was not much discussion of the auto industry, but one Senator made a tangential reference to previous CFPB action related to auto lending, and one House member sought comment on inflation and implications for auto lending and repossessions.

