



*Helping You Drive Vermont's Economy*



October 31, 2022

Greetings <<First Name>>,

### **In this Issue**

- [VADA Annual Meeting Notes](#)
- [Welcome New Members](#)
- [Subscribe your staff to our newsletter!](#)
- [Dealership General Manager from the Dominican Republic Achieves His American Dream](#)
- [DEC: Changes to Vermont Hazardous Waste Regulations](#)
- [Fuel Economy Guides Must be Available](#)
- [Regulation Z & M Thresholds Increase](#)
- [New IRS Employee Retention Tax Credit Guidance Warns of Pitfalls](#)
- [Adverse Action Notices - Reminder](#)
- [Nancy Phillips Associates Orchestrates Sale of Audi Rutland, Rutland Volkswagen, and Rutland Dodge-Ram to Lundgren Automotive Group](#)
- [Don't Share PPI About a Vehicle's Prior Owner](#)
- [Dealer Group Settles FTC Suit Over Fees and Discrimination Claims](#)
- [Training Required for All Employees Under Revised Safeguards Rule](#)

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**VADA Annual Meeting Notes**

President Bob Cody called the Annual Meeting to order, noting our first in-person gathering in three years and the changes the automotive industry has experienced in that time - the impact of Covid, electric vehicle technology, parts and vehicle shortages and the number of dealerships that have changed hands. Bob's steady leadership during these turbulent times was much appreciated by his fellow dealers, industry associates and the staff.

Education Director George Dykstra, who retired in June, has worked with Vermont automotive instructors and students for over twenty years, was recognized and honored for his tremendous contributions on behalf of the automotive industry. Kim Gauthier, VADA Executive Assistant, was also recognized for more than ten years of service providing dedicated support to VADA members.

Congratulations to your newly elected VADA 2022-23 slate of officers and directors:

**VADA Officers:** President Jack Castellaneta, Vice President John DuBrul, and Treasurer Mitchell Jay.

**VADA Board of Directors:** Denise Alosa (Truck Representative), Scott Brileya, Jack Castellaneta, Bob Cody, John DuBrul, Dan Handy, Frank Hanenberger (NADA Director), Mark Hayes (NADA PAC Director), Brian Hoar, Mitchell Jay, Mike Loschiavo, and Jane Lowery.

Executive Director Marilyn Miller announced she is stepping down as Executive Director and will assist with the transition through the end of the year. She introduced Matt Cota of Meadow Hill Consulting, who will provide association management and advocacy services for VADA effective October 1<sup>st</sup>.

### **2022-23 VADA Membership Directory**

M. Miller announced that the VADA Membership Directory has been updated and will be distributed to all members. In addition to membership type, line make, and county location, the directory includes franchise and advertising laws, important regulatory and industry contacts, Lemon Law and AUTOCAP statistics, and annual sales and economic impact reports. The Directory is also available on VADA's website.

### **FTC Vehicle Transaction Rule & Amended FTC Safeguards Rule Overview & Update**

Brad Miller, NADA Chief Regulatory Counsel, Digital Affairs and Privacy, provided an [Overview and Update of the Amended FTC Safeguards Rule](#) and an [Amended Final Safeguards Rule Preliminary FAQ](#). Kim, can you link Brad's things here?) **[The deadline](#)**

**for compliance with this Rule is December 9<sup>th</sup>**. Industry analysts predict it takes seven weeks to complete the process for compliance.

### **A Dealer-Centric Solution to the Revised Safeguard's Rule**

CEO and Co-Founder of ComplyAuto, Chris Cleveland, provided [A Dealer-Centric Solution to the Revised Safeguards Rule](#). The VADA Board of Directors endorsed ComplyAuto's program, which has been endorsed by the majority of dealer associations around the country. Suffice it to say, there were several dealers lined up to talk with Chris at the conclusion of his presentation.

### **Vermont EV Program Updates**

Tori Scarzello, Efficiency Vermont Program Manager, provided a [Vermont EV Program Update](#). Members also received [A Timeline for Implementation of the New Clean Vehicles Tax Credit](#) prepared by NADA.

### **Vermont Dealer Franchise Law Update**

Members received a [Summary of Vermont's New Motor Vehicle Dealers Franchise Law-Senate Bill #47](#) in their registration packet. (Kim, can you find this and include it as a link)

### **FMLA & VT Leave Management**

Karen English, Senior Consultant and SVP with Alera Group Company, provided an [FMLA & Vermont Leave Management](#) presentation.

### **DMV & IT Upgrades**

DMV Commissioner Wanda Minoli reported on the process for upgrading the DMV IT systems and the importance of including dealers as they work to improve the efficiency of the Dealer Services Division. In recognition of her retirement, Commissioner Minoli presented Executive Director Marilyn Miller with her own ncd VADA license plate and Dealer Registration Certificate. (Think I'm going to try using that in Florida 😊)

A special "THANK YOU" to all our sponsors and exhibitors.

**Aftermarket Specialists**

**BlueCross BlueShield of Vermont**

**Colonial Life**

**ComplyAuto**

**Cox Automotive**

**Efficiency Vermont**

**GW Marketing Services**

**Northeast Delta Dental**

**Noyle Johnson Group**

**Zurich**



*(Matt Cota, Marilyn Miller, Tim Ayer and Robert Cody)*

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## **WELCOME NEW MEMBERS!!!!**

We are delighted to share the many dealerships we've added to our VADA member ranks!

### ***LAV Automotive, Inc. dba Volkswagen of Rutland***

176 US Route 7 South

Rutland, VT 05701

Owner: Barry Lundgren

[www.rutlandvw.com](http://www.rutlandvw.com)

### ***LAV Automotive, Inc. dba Audi Rutland***

176 US Route 7 South

Rutland, VT 05701

Owner: Barry Lundgren

[www.audirutland.com](http://www.audirutland.com)

***LDR Automotive, Inc. dba Lundgren Dodge Ram of Rutland***

176 US Route 7 South

Rutland, VT 05701

Owner: Barry Lundgren

[www.rutlanddodgeram.net](http://www.rutlanddodgeram.net)

***Oliver Family Holdings Inc. dba Oliver Subaru of Rutland***

128 US Route 7

Rutland, VT 05701

Owner: Jose Oliver

[www.oliversubaruofrutland.com](http://www.oliversubaruofrutland.com)

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**Subscribe your staff to our newsletter!**

Make sure your staff stays up-to-date and involved by having them subscribed to our newsletter. It's important that the key members of your dealership, like General Managers, CFO's, Fixed Operations and Controllers, receive our communications. Send an email to Kim Gauthier at [kgauthier@vermontada.org](mailto:kgauthier@vermontada.org) with the names and emails of staff members you'd like to get subscribed



## Dealership General Manager from the Dominican Republic Achieves His American Dream

When he arrived in Boston from the Dominican Republic 20 years ago, Jose Oliver had the clothes on his back and \$70 in his pocket. This month, he achieved his American dream when he bought his own business, the former Rutland Subaru in Vermont, made possible thanks to a team that recognized his potential.

Oliver's purchase of the dealership, now called Oliver Subaru, from its most recent owner was brokered by Nancy Phillips Associates of Exeter, New Hampshire. The company handles the sale of auto dealerships throughout New England and New York and works exclusively with major auto dealers and auto dealership groups from around the country. With the support and advocacy of Nancy Phillips Associates in conjunction with Live Oak Bank, JP Morgan Chase Bank and Subaru New England, Oliver is now the incredibly proud owner of his first dealership.

"In today's business climate this type of story is rare because there are so many barriers to entry, primarily the capital investment and financing and to Jose's credit, he had that lined up," said Bryan Dumais, Vice President, Market Development for Subaru New England. "We supported him because we knew of him, he's worked with Subaru, he had a good reputation, and he did his research. Quite honestly, we've been successful as a family business for over 50 years because of the concept of single store operators like Jose."

Connor Duncan, VP of Dealer Operations for Live Oak Bank, served as the lender for the transaction and was immediately impressed with Oliver when they first spoke in January of 2022. "At Live Oak Bank, we have a few mantras that have permeated our culture throughout the years. One of those is to identify those people who have the 'eye of the tiger' meaning they embody a certain grit and tenacity as to how they go about their business," he said. "Jose's passion was evident, and it was clear that he would continue to persevere in order to attain that singular important goal he had set when he first got into the car business – buy a store and become a dealer principal."

Oliver, 41, was born in the Dominican Republic and moved to Massachusetts in 2001 where his mother was already living. He worked multiple jobs as he put himself through school to become a civil engineer but as he prepared to graduate, he found the only jobs were desk jobs that didn't fit with his personality. "I'm a people person," he said.

His decision to pursue a sales job in 2006 at Auto Fair Honda in Manchester changed his course. "From the moment I started my career in the car business, I wanted to own my

own dealership, but everybody told me it would never happen for someone from my socioeconomic background who moved here from another country and didn't have the resources," he said. Undeterred, he went back to school and graduated with a Bachelor's in Business Administration and a minor in accounting from Southern New Hampshire University in 2015. He finished his degree while working 60 hours a week at his dealership job with a newborn child at home. "Then I started researching what it takes to get to the next step," he said.

He completed a one-year general manager training program and got his first GM position at Auto Fair Subaru of Haverhill where he worked 362 days his first year. Most recently he was the General Manager of Twin City Subaru in Berlin, Vermont.

When he began reaching out to auto dealership brokers and franchisors to ask how he could buy a dealership, most of his calls were not returned or the response wasn't encouraging. After connecting with Nancy Phillips in the winter of 2022, with the benefit of Live Oak as lender, the tide started to turn for Oliver.

"Nancy was the only broker that took the time to sit down with me and tell me what we needed to do to get this accomplished," Oliver said. "She delivered the perfect dealership located near where I lived in Vermont and helped me through every step of the acquisition. It was an enormous challenge for her as well as for me and without her perseverance and my determination, this would not have come to pass."

Phillips said her company prides itself on having the distinct ability to find the right candidate for every dealership transaction as well as identifying those like Oliver who possess the tenacity and drive to succeed in business.

"First and foremost, that individual must be a top producer with a track record of success as a dealer or general manager who the franchisor will be excited to do business with. Secondly, it is a person with solid funding in place or the ability to get there. Jose met the first criteria. While the second was certainly a challenge, I believed in Jose, and I was convinced by Connor Duncan at Live Oak that they did too," Phillips explained. "Together, and with the additional support of Arabah Woodbury and a new initiative at Chase Auto Finance that provides floor plan to minority candidates, we were literally on our way to making history for this young man from the Dominican Republic."

Oliver is thrilled to bring his approach to car sales to his new dealership and thankful to those who helped on his journey. "It was a lot of hard work and the biggest thing for me is to never listen to the naysayers. If you believe in it and yourself and you are willing to work harder than you ever have before to achieve it, then then go after it," he said.

Oliver lives with his wife Claudia and their children in the community his dealership serves. Oliver is immensely grateful for the support of his wife and his mother. The family and the dealership have embraced their community and are committed to giving back to the people they share the beautiful state of Vermont with.

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## **DEC: Changes to Vermont Hazardous Waste Regulations**

Montpelier, VT — On February 1, 2022, the Vermont Department of Environmental Conservation (DEC) issued changes to the [Vermont Hazardous Waste Management Regulations \(VHWMR\)](#). The VHWMR regulates the handling, use, reuse, and recycling of hazardous waste in Vermont. Hazardous waste has chemicals or properties — such as ignitability, corrosivity, reactivity, or toxicity — that can harm public health or the environment.

“The DEC periodically issues changes to regulations to fix errors, clarify language, and include new federal rules,” said DEC Commissioner John Beling. “With the changes that took effect in February, Vermont can better manage hazardous wastes such as sludges, cleaning solvents, painting wastes, and acids.”

The VHWMR are as strict as the federal rules and include state-specific requirements. In the latest changes, the DEC made major edits to subchapters 1, 2, 3, 7, and 9 and created subchapter 10.

To help hazardous waste generators, hazardous waste handlers, and Vermonters understand the changes, the DEC created new [online resources](#)). Interested parties can view, download, or print resources like newsletters, fact sheets, webinars, and handbooks. On August 11, 2022, the DEC’s Hazardous Waste Program held a [webinar](#)) to review the changes to the VHWMR. Attendees learned:

- How to identify hazardous waste
- How to determine generator category
- What the management standards are for generator categories
- What the alternative management standards are for conditional exemptions, episodic events, and universal waste

Members of the public can watch the [webinar recording](#)) or view the [presentation slides](#)) online. For more information about the Hazardous Waste Program, [visit the Program webpage](#)). If Drew Youngs is not available, contact Anna Bourakovsky at 802-477-2981 or [Anna.Bourakovsky@vermont.gov](mailto:Anna.Bourakovsky@vermont.gov).

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## **Fuel Economy Guides Must be Available**

[2022 Model Year Fuel Economy Guide](#)

[Preliminary 2023 Model Year Fuel Economy Guide](#)

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## **Regulation Z & M Thresholds Increase**

On October 13, 2022, the Federal Reserve Board and the Consumer Financial Protection Bureau announced the dollar thresholds used to determine whether certain consumer credit and lease transactions in 2023 are exempt from Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing).

By law, the agencies are required to adjust the thresholds annually based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, known as CPI-W. Transactions at or below the thresholds are subject to the protections of the regulations.

Specifically, based on the annual percentage increase in the CPI-W as of June 1, 2022, Regulation Z and Regulation M generally will apply to consumer credit transactions and consumer leases of \$66,400 or less in 2023.

Although the Dodd-Frank Act generally transferred rulemaking authority under the Truth in Lending Act and the Consumer Leasing Act to the CFPB, the Board retains authority to issue rules for certain motor vehicle dealers. Therefore, the agencies are issuing these adjustments jointly.

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## **New IRS Employee Retention Tax Credit Guidance Warns of Pitfalls**

On October 19, the IRS issued guidances that:

1. Warned employers to be wary of third parties advising them to claim the ERC when they may not qualify. Some third parties are taking improper positions related to taxpayer eligibility for, and computation of, the credit. These third parties often charge large upfront fees or a fee that is contingent on the amount of the refund and may not inform taxpayers that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.

2. Suggested that if a business filed an income tax return deducting qualified wages before it filed an employment tax return claiming the credit, the business should file an amended income tax return to correct any overstated wage deduction.

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### Adverse Action Notices - Reminder

In addition to financial institutions, dealers must issue adverse action notices to consumers under certain circumstances regardless of the actions of the finance sources.

Under the Equal Credit Opportunity Act (ECOA), adverse action is defined as “a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.” The Fair Credit Reporting Act (FCRA) incorporates the same definition as in the ECOA, and then adds to the definition “any action taken or determination that is...adverse to the interests of the consumer.”

Both ECOA and FCRA require adverse action notices, and the DOB may audit for them.

Adverse action notices **must** be provided under the following circumstances:

- The dealer makes a negative credit determination on the spot which includes a decision not to send the credit application to any finance source.
- The dealer submits the customer’s application to multiple finance companies through a credit portal like DealerTrack or Route One and no finance company approves credit.
- The dealer submits the credit application directly to finance sources, but none will approve credit.
- A customer applies for specific credit/lease terms but does not qualify for those terms and does not accept a counteroffer.

Examples of when the dealership **does not need** to send an adverse action notice include:

- When the dealership submits a credit application to a bank or finance company and the customer expressly accepts or uses the credit offered.
- When the customer applies for credit on certain terms (such as a down payment amount), and the dealership offers the deal on different terms (a larger down payment), and the customer accepts the dealership's counteroffer; or
- If an application is sent to multiple creditors and the customer accepts or uses the credit offered by any one of them, then no adverse action notice needs to be sent by the dealer even if some of the creditors declined to offer financing. (Creditors who decline the customer's application often do send an adverse action notice since they do not know whether the customer has accepted financing from another creditor. But, in this instance of using multiple creditors where one offer is accepted, the dealership does not need to provide a notice.)

Since 2011, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, additional information must be included in the adverse action notice if the dealership used a consumer's credit score in taking adverse action. This information includes:

- the consumer's credit score.
- the date the score was created.
- the range of possible credit scores under the model used to generate the score;
- the key factors that adversely affected the consumer's credit score in the model used. Up to four key factors provided by a consumer reporting agency must be included. Five, if one of the factors is the number of recent inquiries; and
- the name of the person or entity that provided the credit score.

If the dealership does not provide the requested financing, the dealership must send the adverse action notice to the customer within 30 days after receiving a completed application. If the dealership makes a counteroffer that the customer does not accept, the dealership must send the adverse action notice within 90 days after notifying the customer of the counteroffer.

If the dealership receives an incomplete application and does not receive the missing information and does not send a "notice of incompleteness," the dealership must send an adverse action notice to the customer within 30 days after receiving the incomplete application.

The ECOA does not expressly require a specific manner of delivery of the adverse action notice. The dealership can give the notice to the customer in person or send it by mail, fax, or electronically (if customer has provided consent).

The dealership should retain a copy of the credit application, denial, and adverse action notice for five years.

For additional information on adverse action notices, see NADA's A Dealer Management

Guide to Adverse Action Notices, available at [www.nada.org/nada/education-consulting/education-catalog](http://www.nada.org/nada/education-consulting/education-catalog).

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### **Nancy Phillips Associates Orchestrates Sale of Audi Rutland, Rutland Volkswagen, and Rutland Dodge-Ram to Lundgren Automotive Group**

**Rutland, VT** – Nancy Phillips Associates is pleased to announce the sale of Audi Rutland, Rutland Volkswagen and Rutland Dodge-Ram to Barry and Patrick Lundgren of the Lundgren Automotive Group.

Nancy Phillips Associates has spearheaded multiple transactions for Lundgren Automotive Group whose holdings include one of the top performing Honda dealerships in New England. Brothers Barry and Patrick Lundgren lead the family-owned group based in Massachusetts and southern Vermont. The brothers also own Lundgren Honda of Auburn, Lundgren Honda of Greenfield, and Lundgren Subaru of Bennington. Audi Rutland and Rutland Volkswagen will continue operating under the same name while the Stellantis dealership will be called Lundgren Dodge-Ram.

Barry Lundgren, buyer, explained, “I don’t know anyone else with the same level of integrity that I have experienced with Nancy Phillips. She is able to source great deals and works tirelessly to hold them together and bring them to the finish line. One of Nancy’s talents is that she’s like a matchmaker putting the right buyer with the right seller based on the goals of each party. If the seller wants to ensure his or her store is sold to someone who is very employee centric or customer centric, she’s extremely good at finding the right dealer. The whole team at Nancy Phillips Associates is fantastic and does a stellar job putting the entire package together, from negotiating every aspect of the deal itself to the exhaustive paperwork that’s required. It’s a colossal undertaking. They’re really on your team. You’re not just paying them to buy or sell - you’re paying them for all of the support that goes with it.”

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## Don't Share PPI About a Vehicle's Prior Owner

**Providing vehicle history information to used car buyers is a common and encouraged practice, but dealers need to be careful not to improperly share protected personal information about prior owners.** The federal Drivers Privacy Protection Act (DPPA) makes it unlawful to disclose “protected personal information” from a “motor vehicle record” without consent except in [very narrow circumstances](#) that typically do not apply in motor vehicle sales.

- **Motor vehicle records** are not only information secured through the Iowa DOT’s ARTS system but also include “any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.”
- **Protected personal information** “means information that identifies an individual, including an individual’s photograph, Social Security number, driver identification number, name, address, telephone number, and medical or disability information.”

**Violation of the DPPA can result in fines up to \$5,000 for individuals and up to \$10,000 for businesses** in addition to civil liability for actual damages (but not less than liquidated damages in the amount of \$2,500) plus attorney fees and other litigation costs and punitive damages upon proof of willful or reckless disregard of the law.

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## Dealer Group Settles FTC Suit Over Fees and Discrimination Claims

A Maryland dealership group recently agreed to pay \$3.38 million to settle a Federal Trade Commission (FTC) lawsuit for allegedly charging illegal fees and discriminating against Black and Latino customers. The dealer group denied discriminating but settled the lawsuit.

The dealership group, along with its president and vice president, will pay the fine to refund the customers who the FTC claims were affected by the dealership's practices.

In its complaint, the FTC alleges that the dealer group advertised certified, recondition, or inspected cars at specific prices but added extra certification, reconditioning or inspection fees it falsely claimed customers were required to pay. For example, the FTC cited on instance in which a vehicle advertised for \$24,050 sold for \$26,440 because of illegal add-on fees.

The FTC also said the dealer group charged Black customers approximately \$291 more and Latino customers \$235 more in interest than white customers.

The FTC issued a statement that it is continuing its "crackdown on junk fees and discriminatory practices." On June 23, 2022, the Federal Trade Commission (FTC) proposed a rule that would impose a wide range of new duties and restrictions on motor vehicle dealers. NADA is mounting a comprehensive and detailed response to the proposal and many dealers across the country assisted in a letter writing campaign in early September to better educate the FTC on dealership practices.

The FTC wants to protect consumers from what it says are deceptive or unfair practices by dealerships. The agency wants to ban finance and insurance coverage and physical vehicle add-ons that "provide no benefit" and require expanded disclosure and consent on such optional products.

The dealership group refuted the FTC's findings, claimed that the allegations of discrimination were based on an unreliable approach to guessing borrower's races but that fighting the charges in court would take too long and be too costly for the dealerships.

In addition to refunding nearly \$3.4 million to customers, the FTC is requiring the dealership group to establish a fair lending program. The program will have a provision to either not include a financing markup or to charge the same markup rate to all customers. The FTC stated that the dealership had a policy to prevent discrimination but did not monitor or enforce its use.

### **NADA Fair Credit Compliance Program**

The NADA Fair Credit Compliance Policy & Program is an optional program that is designed to strengthen a dealership's efforts to comply with fair credit laws.

Dealers and the auto lenders to which they assign their credit contracts may be exposed to liability for a fair credit violation if they are found to have discriminated against a credit applicant based on his or her race, national origin, or other prohibited factor. This applies to both intentional and unintentional (disparate impact) discrimination.

Dealers must ensure that their policy for determining the amount they earn for arranging financing

will not give rise to post-transaction claims that the policy resulted in a negative statistical disparity in the amount of dealer participation paid by customers in a protected class.

It is strongly recommended that dealerships use Appendix D, the Dealer Participation Certification Form available at the back of the NADA Fair Credit and Compliance Guide for every vehicle transaction. The Guide can be found online at: <https://www.nada.org/regulatory-compliance/nada-fair-credit-guidance>

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## Training Required for All Employees Under Revised Safeguards Rule

**All dealership employees must receive training** under a requirement tucked away in the **FTC's Revised Safeguards Rule**. The highly qualified specialists who perform the specialized IT functions that manage information security risks and oversee the mandated information security program must be updated and trained on an ongoing basis.

- Those specialists must be "qualified information security personnel," and can be dealership employees or third-party vendors.

**The training requirement that some dealerships may have missed covers all employees, however.**

- Dealerships must provide "your personnel with security awareness training that is updated as necessary to reflect risks identified by the risk assessment."
- And it makes no reference or limitation to specialized or designated IT employees.

**Make a Note:** This **all-employees training requirement** becomes effective December 9, 2022, the same date as the full compliance and enforcement deadline.

If your dealership doesn't have a Safeguards Rule compliance plan in place, it's past time to get to work. **A Dealer Guide to the FTC Safeguards Rule** from NADA is a valuable resource. And VADA recommends **ComplyAuto's FTC Safeguards Rule Compliance Solution** to help dealerships tackle the vast requirements of the rule.



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