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# Q3 Auto Dealer Policy Landscape

## What's Happening in Washington:

Top Democrats in Congress reached a deal on a slimmed down version of what was previously known as the "Build Back Better Act." The new legislation, entitled "the Inflation Reduction Act of 2022," was approved via the budget reconciliation process allowing Democrats to pass the measure without Republican support.

The legislation addresses prescription drug prices, creates climate and clean energy initiatives including a new electric vehicle tax credit, and raises certain corporate taxes. Congress also passed legislation this summer to boost funding for domestic chip production and help strengthen U.S. competitiveness with China in the semiconductor space. On the regulatory front, agencies are continuing with aggressive rulemaking agendas, including the FTC and CFPB.

After its August recess, Congress returned for session in September before breaking again for the month of October to turn its attention fully to the November elections. Polling has tightened since the summer highs for Republicans. The GOP is still favored to take control of the House of Representatives, but the Senate appears to be a jump ball at present.

## Democrats' Reconciliation Bill Includes Changes to EV Tax Credits

- The recently passed "Inflation Reduction Act" (IRA) includes a mixed bag of changes that in some cases expand electric vehicle tax incentives and in others impose new limitations.
- The proposal eliminates the cap of 200,000 vehicles per manufacturer, so long as new requirements are fulfilled. The IRA would also allow for used vehicles resold through a car dealer to now qualify for a $4,000 credit.
- **On the dealer side…**Starting in 2024, dealerships will be able to offer the value of a tax credit up front to consumers. This would function like a "point-of-sale" rebate and allow consumers to use the credit either as a down payment or price reduction at the time of purchase, as opposed to waiting until tax filing season.
- **A host of new requirements…**Notably, many OEMs have voiced concern that the new restrictions included in the IRA come January would essentially disqualify all EVs on the market today. Eligible vehicles will have to comply with various requirements that promote domestic assembly. The value of half of the $7500 credit is predicated on vehicles meeting an increasing threshold of critical mineral sourcing from the U.S. or countries with which the U.S. has a Free Trade Agreement. The other half of the credit is tied to thresholds of battery component manufacturing and assembly in North America. Final assembly of the EV must be done in North America.
  - The proposal also includes vehicle price and buyer income caps – which would push many higher-end EVs and high-income earners out of the eligible market.

## FTC Proposes Rule Governing Car Sales

On June 23, the FTC proposed the Motor Vehicle Dealers Trade Regulation Rule, which aims to make the "car-buying process clearer and more competitive." The Commission sought public feedback on about 50 detailed questions. To access the public comment forum, visit the Federal Register.

- **What is the intended goal?** The FTC states the goal is to protect buyers from unwarranted or hidden costs and fees, and to promote competition. The FTC argues that by disclosing the full price upfront, consumers can more easily comparison shop.
- **What prompted the rule proposal?** The FTC pointed to three key areas as the impetus behind the issuance: 1) recent spikes in auto prices; 2) a 2020 FTC staff report finding that consumers were often not fully aware of key terms of sale when purchasing a car; and 3) high levels of consumer complaints in the car purchasing space (100k annually for past three years).

  **Note: The Commission suggests that while it has brought over 50 law enforcement actions and 181 state-level enforcement actions, consumer complaints in the auto buying space remain among the top ten complaint types each year, thus warranting a rule.**

- **What's included?** The proposal includes a host of disclosure and compliance requirements and puts limits on dealers' advertising practices and ability to offer certain "add-on" products and services. Specifically, the rule would: ban "bait-and-switch" claims; ban fraudulent junk fees; ban surprise fees; and require full upfront disclosure of all costs and conditions, as well as obtain consumers' clear "informed consent" for each charge and condition.
  - For example, dealers would be prohibited from offering things like "nitrogen-filled tires," that do not provide more nitrogen than naturally exists in the air; selling GAP insurance to buyers who would be excluded from coverage via hidden restrictions; or offering other add-ons that provide no benefit, like extended warranties that merely duplicate coverage already provided on the vehicle.
- **Next steps?** FTC Commissioners and staff will review public feedback and determine whether to proceed with the issuance of a final rule. Notably, the FTC voted 4-1 (with Republican Commissioner Phillips joining the three Democrats) to issue the proposed rulemaking, so it is likely a final rule will ultimately be issued in some form and take effect.
  - **On timing…**While timing for implementation remains unclear, given the significant amount of public feedback, it could take months for the Commission to review comments, make applicable changes, and issue a final rule.
  - **Commissioner Christine Wilson was the lone dissenter.** She encouraged stakeholder feedback and suggested that complex regulatory schemes "tend to create market distortions that stifle innovation, increase costs and prices, and ultimately harm consumers."
- **Industry Mobilizing.** The National Auto Dealers Association has criticized the proposals, suggesting that the roughly 100k annual complaints make up just a fraction of a percentage of the 42 million estimated car sales last year, and that not all complaints were directed at auto dealers – many pointed to rental agencies and auto parts stores. NADA and others had asked for an extension of the comment period given the sweeping and surprising nature of the proposed rule, but the FTC declined those requests. There has also been criticism that the rulemaking focuses specifically on dealers that are "predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." This would seemingly exclude companies like Tesla, despite their direct-to-consumer framework.
  - Zurich has been conducting its own analysis of the rule to provide comment feedback as we work with coalition partners to respond to the proposal and consider a broader strategic advocacy response.

## FTC Safeguards Rule

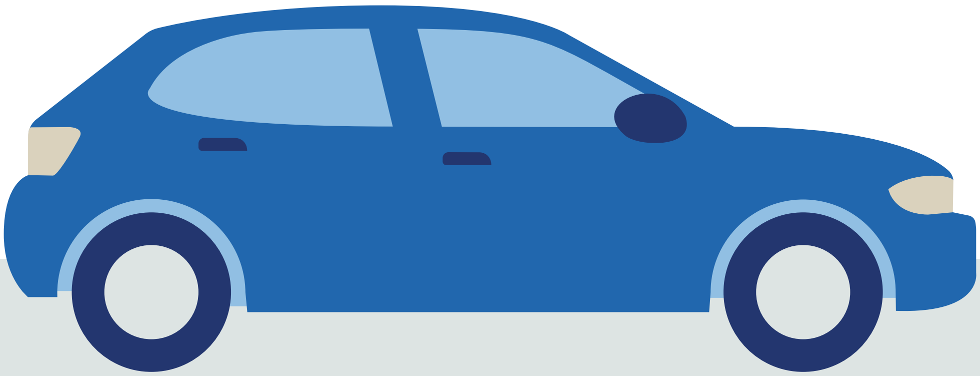
All auto dealerships at this point should be familiar with the Federal Trade Commission's Safeguards Rule and the **December 9, 2022**, deadline to comply with the rule's 2021 expansions that seek to safeguard customer financial information.

- In May, the FTC issued a guidance publication that provides further insight into what to expect once the rule takes effect and provides step-by-step guidelines into what a company's information security program must include.
- 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 systems;
  - Implementing certain security mechanisms (i.e., data encryption, an incident response plan, multi-factor authentication); and
  - Identifying an internal or external advisor to manage the compliance process.
- See a helpful guidance video from the National Automobile Dealers Association outlining the rule and the various implications for auto dealers.
- **Zurich has an offering that could help you facilitate your compliance efforts.**

## Congress Passes Chips Funding

To close out the month of July, Congress passed legislation to provide nearly $53 billion in funding and incentives for domestic chip production, along with another $200 billion for related scientific research. While it could take years for consumers to experience the effects of the legislation when shopping for cars or electronics, the bill will impact the auto industry as it continues to navigate recent global chip shortages that stemmed from the pandemic.

- **Why does this matter?** According to the Alliance for Automotive Innovation, the chip shortage prevented 1.5 million vehicles from being produced in the U.S. in 2021, leaving dealerships with historically low levels of new-vehicle inventory. Providing additional funds to support domestic chip production will help supply issues and will also be key as the industry transitions towards more technologically advanced and automated features.
- **Notably…**Semiconductor chips are also a key component of electric vehicles – roughly doubling the average number in internal combustion engine (ICE) vehicles. As the popularity of EVs continues to rise, chip production will be vital in ensuring U.S. automakers and dealers can remain competitive and keep up with consumer demand.



## Other Notable Updates

- **FTC Commissioner Phillips to step down this fall, leaving a 3-1 Democratic majority.**
  - Republican Commissioner Phillips' departure will not deter any outstanding or forthcoming rulemakings – given that the Commission will maintain a Democratic majority – but will leave a vacant and crucial seat for the President to fill.
- **Lawmakers announce plans for a bipartisan Congressional Autonomous Vehicle Caucus.**
  - Reps. Bob Latta (R-OH) and Debbie Dingell (D-MI) are leading the newly created caucus to help educate Congress on the importance of autonomous vehicle technology and to revive efforts to advance legislation to boost AVs.
- **Prospects for LIFO tax relief legislative remain uncertain.**
  - The Supply Chain Disruptions Relief Act – legislation to provide tax relief to auto dealers that use the last-in, first-out (LIFO) accounting method – was introduced in the House earlier this spring by bipartisan Reps. Bob Latta (R-OH) and Dan Kildee (D-MI). Since then, a Senate companion bill has been introduced by key Senators Sherrod Brown (D-OH), Chairman of the Senate Banking Committee, and Sen. Tim Scott (R-SC). Six additional Senators across the political spectrum have also vocalized support for the measure. The proposals have not seen a vote in either Chamber of Congress, posing a challenge for passage this year given limited time on the Congressional calendar.
  - Notably, Treasury officials continue to emphasize that Congressional action is warranted, as the Department does not have sufficient authority to grant tax relief for affected dealerships under current law.

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A1-P0365857-A (09/22) P0365857