THE CCIA STAR

Keeping the industry informed.

July 2022 • Volume 9, Issue 2

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Sarah Ferman Baker, president & CEO

I am excited to be writing you on my first official week as President and CEO of the Consumer Credit Industry Association. I want to first thank the Executive Committee and the Board of Directors for having the confidence in me to lead CCIA into the next chapter. It is an honor and privilege to be a part of this incredible, diverse association, one that I have worked with for several years.

Many of you may know me from my time at the American Bankers Association, where I led state and federal advocacy efforts for the Bank Insurance Council and former American Bankers Insurance Association (ABIA). For those of you who I haven't met, I previously spent over a decade in Washington, D.C., navigating the political landscape while working on Capitol Hill and later in the financial services industry. The public policy expertise I have acquired over the years has given me a thorough knowledge of the industry and while who's in office may change, our priorities and mission do not.

Success requires that we consistently work to modify our strategy to achieve our mission and vision as the trusted resource and leading advocate for the consumer asset and credit protection industry. Overregulation continues to present challenges for the industry, forcing our members to comply with duplicative, conflicting, and burdensome legislation and regulations. Now more than ever, it's time to be proactive and responsive to state and federal initiatives that limit consumer choice and hinder financial security.

Elevating our brand to increase awareness of our issues at the local, state, and federal levels is essential and I am proud to announce that last week we launched the official page of the Consumer Credit Industry Association on LinkedIn. We encourage you to take a moment to follow our page and invite your colleagues and network to follow as well.

By increasing the visibility of our initiatives and integrating our resources through cross-channel communications, we can provide additional platforms for information sharing and introduce the association to potential new members through the power of our knowledge and content. Strategically summarizing our content for an external audience will showcase our leadership in the industry, promote our advocacy efforts and encourage membership engagement.

We have a great staff here at CCIA and some of the best support counsel in the industry. The caliber of membership is unmatched and continues to be our greatest asset with every member bringing a unique voice, quality perspective and robust knowledge to the table. As we move forward, it is important for us to leverage our strengths, our network, and our knowledge to increase brand recognition. While there are still mountains to climb and progress to be made, I am optimistic and enthusiastic about the future of CCIA.

I look forward to meeting many of you next week in Chicago for the Summer Meeting. Please do not hesitate to reach out if you have any questions or comments.

Sarah Ferman Baker

The FTC Puts the Pedal to the Metal: The Auto Dealer Proposed Rule

L. Jean Noonan, Hudson Cook

The Federal Trade Commission has finally done it—proposed a sweeping new rule that affects how auto dealers will sell cars and voluntary protection products, which the FTC calls "add-on" products, with a touch of disparagement. The proposed rule lists 16 prohibited misrepresentations. Some of these need clarification or revisions, but most involve long-standing FTC concerns. On the other hand, the required disclosures radically micro-manage the sale of vehicles and voluntary protection products. Even dealers who have long embraced best practices would need to retool their processes to comply with the proposed rule.

This article will cover the key provisions of the proposed rule. Next month, we'll discuss the potentially troubling aspects of the proposal. Remember, everyone will have 60 days after publication to submit comments on the proposal—a time that is likely to expire around the end of August. But first, we'll look at why the FTC says we need a rule.

It is easy to think such a rule is unnecessary. As soon as the FTC released the proposal, I received my first email about it: "Hey, Jean, all the things the FTC is banning in the rule are already illegal, right?" That's a good point. The FTC has previously alleged that almost every misrepresentation prohibited by the proposed rule is an unfair or deceptive act or practice in a past settlement, and some have been the focus of many enforcement actions over the years.

In brief, it seems the FTC thinks the sanctions for engaging in bad practices have not been strong enough. Last year, the U.S. Supreme Court held that the law does not allow the FTC to do more than get a simple cease-and-desist order for such violations. The FTC cannot make a company give money back to consumers or otherwise pay money for having engaged in an unfair or deceptive practice. (Some folks call this a free bite at the apple, but my University of Texas Law School professor called it a "free kiss at the pig.")

There are ways for the FTC to get fines—and very big ones—for these practices, but first it must adopt what's called a trade regulation rule. Violating an FTC TRR can cost a company up to $46,517 per violation, and the maximum amount is adjusted yearly for inflation. The process for enacting a TRR is cumbersome and typically has taken about five years per rule. More recently, Congress has allowed the FTC to use the more streamlined notice-and-comment rulemaking process in special situations. That's what Congress did in the Dodd-Frank Act. When Congress exempted certain auto dealers from the Consumer Financial Protection Bureau's jurisdiction, it gave the FTC the authority to regulate the exempted auto dealers by adopting a TRR defining unfair and deceptive acts or practices using the streamlined rulemaking procedures.

Many were surprised the FTC didn't jump on this authority in 2011 when Dodd-Frank went into effect. But, whatever the reason for the FTC's inaction then, it has put the pedal to the metal now. Let's look under the hood of this proposed rule.

Which Dealers Are Covered?

The proposed rule covers only motor vehicle dealers who are excluded from the CFPB's jurisdiction. That means the dealer must be "predominantly engaged in the sale and servicing of motor vehicles, the leasing of motor vehicles, or both." The definition will capture franchised new car dealers because they service vehicles as well as sell them. It covers independent dealers, too, but only if they also service vehicles. The proposed rule covers dealers selling not only cars and trucks but also recreational boats, motorcycles, RVs, and other vehicles that are titled and sold through dealers.

Prohibited Misrepresentations

The list of prohibited misrepresentations is long. Some are no-brainers that no honest dealer would make. Others may need a closer look.

- *Advertising.* Auto sales is a competitive business, and the Internet has made it easier than ever for consumers to comparison shop. The FTC believes some dealers seek an advantage by deceptive price

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advertising. Sometimes dealers might advertise the "net" price after a discount or rebate or after a required down payment. In the worst cases, a dealer may never have intended to sell the car at the advertised price or may not have the advertised car available for sale. Because a monthly lease payment is usually lower than a financing payment, the dealer must make clear whether the payment is for a lease or retail financing.

- *Voluntary Protection Products.* Although add-on products are a key focus of this proposed rule, only one of the 16 listed misrepresentations addresses them. Most of the regulation of these products pertains to disclosures. But note that the ban on misrepresentations incorporates two important concepts. First, a "material" misrepresentation involves anything likely to affect a consumer's purchasing choice. Second, a misrepresentation may be express or implied. On this point, usually only fraudsters make express misrepresentations; these are essentially lies. But many reputable companies have gotten crosswise with the FTC over whether the company made an implied claim and, if so, what exactly was implied.

- *Financing.* The rise in the use of credit bureau soft-pulls to "prequalify" consumers has regulatory risk potential. If a dealer quotes terms to a prospective customer (for instance, "Congratulations! You've been prequalified for financing up to $xx,xxx at an APR of x.xx%!), the dealer must think hard about what message a reasonable customer might take from that statement. What if some of the terms are out of line with customers' usual expectations for, say, repayment term or down payment? What if the terms apply only to certain cars? If the consumer will learn of unfavorable conditions only after going to the dealership, the ban on misrepresentations of preapproval terms is likely to come into play. Further, a disclaimer is unlikely to provide safety for the dealer, unless it meets the strict requirements of a message that is "clear and conspicuous." Adding, in smaller print, "Terms not guaranteed. You will learn the final terms at the dealership after submitting an application," is unlikely to be enough.

The difficult compliance issue for this and many other situations is there are no hard-and-fast rules for "clear and conspicuous"; meeting that standard depends on the overall message (or, as lawyers call it, the "net impression"), which has been the law for a long time. What has changed is the giant fines the FTC will be able to seek for a violation of the final rule.

- Other Issues. The proposed rule contains a smattering of miscellaneous issues that an honest dealer is unlikely to find troubling. But here's a tougher one. Some finance sources have rules against taking collateral out of state or out of the country. The proposed rule would effectively require the dealer to know each financing source's rules on moving the collateral.

Disclosures

- Vehicle Sales. The FTC's goal is to make dealers quote a vehicle's offering price, which is the full cash price, excluding only government charges, in any ad and in the first communication with a consumer about a specific vehicle.

- Voluntary Protection Products. The proposed rule requires a dealer selling voluntary protection (add-on) products to maintain an Add-on List that contains all optional products and their prices. A dealership must display this list on its website, on any online service, on any mobile app, and at the dealership. Other ads must disclose where the consumer can view the Add-on List.

- Total of Payments. When quoting a monthly payment for any vehicle, the dealer must disclose the total of payments to lease or purchase that vehicle. Thus, a window sticker that says, "Drive me home for $xxx a month," must also list the total of lease or financing payments. If a consumer says, "Show me the cars on your lot I can buy with monthly payments of $xxx or less," and the dealer points out several cars, the dealer must be prepared to also quote the total of payments for each car.

- Monthly Payment Comparisons. When a dealer presents payment options, such as financing with different repayment terms or amounts down, the dealer must disclose that the lower monthly payment will in- crease the total amount the consumer will pay to purchase or lease the vehicle, if true.

- Add-ons Without Benefit. A dealer would be unable to charge for a product or service that provides no benefit.

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Examples: (1) nitrogen-filled tire products that contain no more nitrogen than naturally exists in the air; and (2) products or services that do not provide coverage for the vehicle, the consumer, or the transaction or are duplicative of warranty coverage for the vehicle. The second point includes a GAP agreement if the consumer's vehicle or neighborhood is excluded from coverage or the LTV ratio would result in no financial benefit from GAP.

- Prices With and Without Voluntary Products. The proposed rule mandates what many dealers have considered to be best practices when selling voluntary protection products. But even the best dealers probably don't go as far as these complicated requirements do.

  Before selling voluntary protection products, the dealer must first clearly and conspicuously disclose: (1) the vehicle's cash price without voluntary products, itemizing the offering price, any discounts, any rebates, any trade-in credit, required governmental charges, and—if the car is financed—the total finance charge; and (2) that the consumer can purchase the vehicle for that price.

  If the consumer wants a voluntary product, the consumer and a manager of the dealership must sign, date, and time-record a written, stand-alone declination form in which the consumer refuses to buy the car without voluntary products. Then the dealer must clearly and conspicuously disclose the vehicle's cash price (or the cash price and finance charge, as applicable), separately itemized charges for any voluntary products the consumer selects, and the total price. If the sale occurs in person, the dealer must make all these disclosures both in writing and orally.

What About Recordkeeping?

The dealer must create and maintain, for 24 months, records needed to prove compliance with the proposed rule. These records include general documents, such as ads, sales scripts, training materials, and all versions of Add-on Lists, and deal-specific documents, including purchase orders, financing and lease documents, signed declination forms and itemized lists of voluntary products desired, and all written consumer complaints.

Questions, Anyone?

The FTC asks the public to consider responding to 49 questions. It is hard to choose, but question 37 may be my favorite. It notes that a car purchase and financing transaction is already a long process in a "disclosure-heavy transaction" and asks whether the proposed add-on disclosures would be meaningful or would be too many. Any dealers out there have some thoughts??

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FTC's Proposed Dealer Trade Rules Sets Sights on "Add-on" Product Sales Regulation

Kristi Richard, McGlinchey Stafford, PLLC

On July 13, 2022, the FTC's proposed Motor Vehicle Dealers Trade Regulation Rule, was published in the *Federal Register*. The FTC's stated purpose of the proposed rule is to "protect consumers and honest dealers by making the car-buying process more clear and competitive". More specifically, the FTC believes consumers do not know the true cost of the vehicle they purchase and finance, and that consumers unknowingly purchase or are tricked into purchasing Add-on products without knowing its costs, benefits, that the Add-on products are optional, or that they are even purchasing Add-ons for the vehicle at all.

The proposed rule defines "Add-on" or "Add-on Product(s) or Service(s)" as any product(s) or service(s) not provided to the consumer or installed on the vehicle by the motor vehicle manufacturer and for which the Motor Vehicle Dealer, directly or indirectly, charges a consumer in connection with a vehicle sale, lease, or financing transaction. While this is an expansive definition the FTC lists "extended warranties, service and maintenance plans, payment programs, guaranteed automobile or asset protection ("GAP" or "GAP insurance"), emergency road service, VIN etching and other theft protection devices, and undercoating" as examples of the most commonly offered Add- on products.

If the proposed rule takes effect, it will become an unfair or deceptive act or practice in violation of the FTC Act, Section 5 for a dealer of any motor vehicle to charge consumers for (i) Add-on products that provide no benefit, (ii) optional Add-on products without presenting specific disclosures including their optionality and price, or (iii) any item without obtaining a consumer's express, informed consent for the charge. The proposed rule also prohibits dealers from having consumers waive of the proposed rules' protections and will impose specific record-keeping requirements on dealers.

No Misrepresentation

Consumers cannot be told that Add-on products and services are required by law. They must be informed that the consumer can purchase or lease the vehicle without the Add-on, and that financing terms will not be dependent on the Add-on purchase. The consumer must be clearly explained the costs of these products, as well as the benefits that the Add-on product and service convey, and any limitations or exclusions.

Add-on Must Provide Benefit

A Dealer may not charge for an Add-on product or service if the consumer would not benefit from it. The proposed rule specifically calls out nitrogen-filled tire related-products or services that contain no more nitrogen than naturally exists in the air. More generally, products or services that exclude coverage for the vehicle, the consumer, or the transaction, or are duplicative of warranty coverage for the vehicle are prohibited. This would specifically include a GAP waiver agreement if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio would result in the consumer not benefiting financially from it.

Disclosures

Cash Price without Optional Add-ons.

Before referencing any aspect of financing for a specific vehicle the dealer must clearly and conspicuously disclose, in an itemized manner, the total of the cash price, plus the finance charge, factoring in any cash down payment and trade-in valuation, and specifically excluding optional Add-ons. It must also be disclosed that the consumer can purchase the vehicle for the Cash Price without Optional Add-ons. In order for the consumer to purchase any Add-ons, the consumer must then decline to purchase the vehicle for the Cash Price without Optional Add-ons. The disclosure and declination must be in writing, date and time recorded, and signed by the consumer and a dealer manager. The Cash Price without Optional Add-ons disclosure and the declination cannot be presented with any other written materials.

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Add-on List

After presentment of the Cash Price without Optional Add-ons, the dealer may then present the consumer with an Add-on List. The Add-on List would include all optional Add-on products for which the dealer charges consumers and their respective prices. If the price of the Add-on varies based on the specifics of the transaction, the Add-on List would have to include the range the typical consumer will pay. For the particular vehicle transaction, the dealer must present the consumer with the Cash Price without Optional Add-ons, the charges for any optional Add-ons selected by the consumer (which must be separately itemized), and the sum of the Cash Price without Option- al Add-ons and the Add-on charges.

The Add-on List is relevant for advertisements as well. If advertisements are presented in print, radio, or television format, the dealer would not be required to include the Add-on List. Instead, those advertisements would be required to disclose the website, online service, or mobile application where consumers can access a copy of the Add-on List.

Consumer's Consent

In general, the proposed rule would require dealers to obtain clear, written and informed consent for any and all charges, fees and conditions of sale, after presenting the consumer with both the Price without Option Add-ons Form and the Add-on List. The proposed rule does not consider a signed or initialed document, on its own, as evidence of a consumer's express, informed consent. Consent also cannot be achieved through the use of "prechecked boxes" or a presentation of an agreement that impairs the consumer's "autonomy, decision-making, or choice." An active election and clear indication of each Add-on desired will individually need to be made by the consumer.

Record-Keeping Requirements

For a period of 24 months, the dealers must maintain records of (i) copies of all materially different Add-on Lists and all documents describing such products or services that are offered to consumers, (ii) copies of all purchase orders, financing and lease documents signed by the consumer, (iii) copies of all service contracts, GAP Agreements and calculations of loan-to-value ratios in contracts including GAP Agreements, (iv) the Cash Price without Optional Add-ons disclosures and declinations, and (v) copies of all written consumer complaints and inquiries related to Add-ons.

The proposed rule are similar to many of the regulatory, compliance and enforcement activity of state and federal regulators over the past few years. However, it is likely to present operational and compliance risks for dealers if the proposed rule goes into effect. The FTC estimates that it will take dealers approximately 15 hours to bring their practices into compliance. This may be an unrealistic estimate of the time it will take to set up new forms and systems, and train employees on the new proposed rule requirements. This is especially true when the dealer does not already have a website to which to direct consumers for the proposed rules required disclosures.

Further, many Add-on products and services are regulated by the states departments of insurance. Other dealer practices are also heavily regulated by the states. While the proposed rule will not supersede consistent and/or additional state law, it may cause confusion among both dealers and consumers. As the FTC points out in its reasoning for the proposed rule, the car buying process is often times long and tedious, with copious amounts of paperwork. The proposed rule, while valiant in its effort to make sure the consumer is fully informed, is going to add to the time and paperwork, often times in a duplicitous manner.

Public comments to the proposed rule are due by September 12, 2022.

State Legislative Update

John Euwema, VP Legislative and Regulatory Counsel, CCIA

Assault on GAP and Credit Insurance

Most of our legislative focus this 2nd quarter of 2022 has been on bills affecting guaranteed asset protection (GAP) and credit insurance in California.

In California, CCIA, GAPA, and state and national auto dealer trades continued to work with the state attorney general, sponsor of the bill, to amend AB 2311. The attorney general had initially been concerned about possible problems with GAP refunds to consumers, seeking to address such problems through AB 2311 for motor vehicle conditional sales agreements. However, the bill has ended up including many more GAP requirements, apparently from those adopted by a few other states like Colorado, leading to several trade comment letters to the bill author and meetings with the attorney general. The bill passed the Assembly and has been somewhat moderated by trade efforts in the Senate so that among other changes, the buyer contacts the administrator or any other appropriate per- son designated by the holder for identification of the amount of any early termination refund instead of the administrator of holder forwarding a calculation periodically, the sale of a GAP waiver is allowed where the loan to value of the vehicle is 70% instead of a 80% limit, and the GAP fee maximum is changed from 2% to 4% of the loan amount. AB 2311 is in the Senate Appropriations Committee for an August 1where it will go to the Senate floor for a vote, following which the Assembly will have to approve the Senate changes. California's legislative session ends August 31, and the trades believe there will be no further favorable changes to the bill. Unfortunately, this bill may be a harbinger of other states' legislative efforts to set rate caps on GAP fees and other GAP requirements.

California continued its assault in the 2nd quarter on GAP and also credit insurance with SB 1311 which will not al- low for the securitization of motor vehicle loan for a service member or dependent if a credit related product, GAP or credit insurance fees or premiums, were included in the loan. This effectively would kill sales of these products to service members with vehicle loans since the auto dealers and lenders won't do an auto loan without securitizing it, and don't offer the products after the loan is completed (service members have no more available funds to purchase them). The products are generally not available from third parties either, including auto insurers for GAP insurance. SB 1311 passed the Senate. In the Assembly, CCIA and the other trades have met with legislators and committee staffers and CCIA has made opposition comments at a virtual Assembly Judiciary Committee hearing and Military and Veterans Affairs Committee hearing. This writer's active Navy son even volunteered to testify at the Military and Veterans Affairs Committee against the bill knowing the value of GAP for service members, in particular, but was unable to do so due to the Committee requiring actual presence in Sacramento to make substantive comments to the bill. We also argued to no success that AB 2311, if passed, would provide new "protections" for all Californians buying GAP obviating the need for SB 1311. Regardless, both Democrats and Republicans passed the bill out of the Assembly committees, and it now resides in the Appropriations Committee and is expected to go the Assembly for voting approval.

Our concern with SB 1311 and AB 2311 extends, too, to similar legislation possibly being introduced by other states. That, and other states might pick up from SB 1311 bill supporters justification for the bill from the U.S. Department of Defense (DoD) 2017 Interpretive Rule Q&A #2 to the Military Lending Act regulations (it was revoked in 2020 under the Trump Administration) which claimed that a secured auto loan normally exempted from the MLA would lose that exemption and fall under the MLA in the event that the loan included purchase money or ancillary products. The MLA allows for states to provide service members additional credit rights and protections, so other states could "use" this Interpretive Rule to allegedly "help" service members by denying the ability to purchase GAP or credit insurance.

As we refer to the DoD Interpretive Rule, it would be appropriate to note that Davidson v. United Auto Credit Corporation (UACC) in the 4th U.S. Circuit Court of Appeals will be decided shortly. Plaintiff brought a class action complaint alleging UACC violated the MLA in a loan to a service member by: (i) failing to properly disclose GAP, pre-paid interest, and doc prep fee associated with his motor vehicle retail installment sales contract, as well as (ii) due to the arbitration provision contained in the contract. The District Court judge found that the plaintiff could not rely upon the DoD Interpretive Rule Q&A #2, which had been revoked, or the language of the MLA provision itself granting the secured auto loan exemption to claim that the loan with GAP caused it to violate the MLA exemption.

The Appeals Court could to our detriment rule that the MLA intended that an auto loan not include purchase money or credit insurance to be exempted or affirm the District Court. Davidson adds further significance by the DoD, CFPB, and the Department of Justice filing an amicus brief (CCIA filed an amicus brief supporting the District Court decision) supporting the plaintiff and the rationale of Interpretive Rule Q&A #2, indicating that these federal agencies may attempt a similar rule adoption

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regardless of the Davidson final decision or influence Congress to end the secured motor vehicle exemption from Senator Reed's current 36% all-in APR bill.

The assault on GAP and credit insurance by state legislation like California's, the Davidson case, and prospective further actions by the DoD and CFPB portend a challenging environment for these CCIA products requiring our continued vigilance.

Finally, the FTC has just exposed for comment a proposed Motor Vehicle Dealers Trade Regulation Rule which, in part, would prohibit dealers from charging fees for "add-on" products that provide no benefits to consumers (who decides what products fit this), require dealers to make disclosures about optional add-on fees,including their price, and disclose to the consumer both the price of the vehicle excluding ancillary products and the full "true offering price" that includes all costs less government fees and taxes. This proposed Rule is discussed above by Kristi Richard of McGlinchey and Jean Noonan of Hudson Cook.

Other State Activity

Rhode Island H 7752a passed the Senate on June 21, 2022 adopting the lender placed insurance model act. CCIA and industry support the model act having worked closely with the drafting NAIC working group.

Bills in Alabama, Georgia, Indiana, New Hampshire, and Oklahoma passed which were favorable for GAP (check our legislative/regulatory monitor for our Thursday calls)..New Jersey SB 902, a bill we worked with SCIC and APCIA, passed. It requires, in part, disclosure of the amount of service contract fees collected and claims paid for the Department of Consumer Affairs website and expands provider definition to include administrator as well as obligor.

A state of Washington bill which would allow for multiple CLPs from multiple insurers to be filed for service contracts and the CLPs could be "first dollar" or default was vetoed by the Governor. A similar bill in Oklahoma was signed by the Governor. South Dakota SB 160 passed exempting service contracts from the insurance code, Wisconsin SB 655 passed adding key fob and EWT to service contracts for leases, and Wyoming HB 64 passed adding MVAPA benefits to service contracts.

On the state regulatory front, we, APCIA and SCIC continued to work with the Arizona DIFI to shape their proposed rules for service contracts (R20-6-407) which were first introduced in October 2021. We have commented three times and participated in two hearings and other virtual discussions with DIFI. All issues were settled, many favorable to our members. It now appears that after DIFI under- takes its further required notices and publications to the public and allows for time for service contract providers to prepare filings that implementation of the new rules will be in the spring of 2023.

Our partnership with the Virginia Financial Services Association to regain the ability of consumer finance companies to sell and finance motor clubs, AD&D, and other ancillary products is progressing. CCIA and 2 members are financially supporting the Association filing a declaratory action to restore these rights which were rescinded by the Bureau of Financial Institutions last year through an administrative decision. The petition for the declaratory action is being drafted, with filing to occur once the Bureau's parent, the State Corporation Committee, which is to receive the petition, adds the third commissioner to its three commissioner governing board, hopefully, in the next few months.

Finally, our collective trade efforts to obtain the support of the Colorado attorney general to revise Rule 8 GAP provisions by regulatory action or support legislation has stalled. The attorney general has agreed to a few potential changes, such as deducting from waiver claims a) consumer contract refunds, b) salvage value of vehicles kept by owners, and c) prior unrepaired damage to the vehicle. Increasing the deductible waive coverage was also agreed to. A legislative bill was drafted redlining the GAP model act to address our issues. However, the attorney general is not willing to move quite yet on our issues by regulatory action or supporting legislation. The Colorado legislative session has ended for 2022, so a bill will have to wait for 2023, and dialogue with the attorney general will continue.

Members can check our Monitor of legislative and regulatory items we are tracking or working to stay current. It accompanies the legislative/regulatory agenda we email to members the Wednesday before our Thursdays legislative/regulatory update calls, which on every 4th Thursday of the month includes insights from our Washington DC lobbyist, KDCR, on federal legislation, and Hudson Cook on federal regulatory agencies and federal and state legislation.

Federal Advocacy Update

CCIA Policy Advisors, KDCR Partners

Congressional Forecast

So far in 2022, Congress has made some progress advancing bipartisan efforts but has remained mostly deadlocked on an array of issues as the November 2022 midterm election draws near. One bipartisan achievement occurred in March 2022 as the President signed into law the 2022 Fiscal Year (FY) 2022 Omnibus Appropriations bill, which included annual funding for federal programs, cybersecurity legislation, and supplemental funding for the Russia- Ukraine crisis.

Meanwhile, in Q2, Congress has been focused on FY 2023 appropriations and the National Defense Authorization Act, conferencing each chambers' China competition legislation (U.S. Innovation and Innovation and Competition Act [USICA] in the Senate and America COMPETES Act in the House), Build Back Better/budget reconciliation, and inflation, particularly as it relates to energy costs. Congress has also remained focused on the Russian invasion of Ukraine.

Other issues that Congress acted on in Q2 included gun reform, the nationwide shortage of baby formula, and Biden Administration nominees. Congressional committees also began work on the FY 2023 Farm Bill. Due to the need for Congress to adhere to statutory dead- lines, there are several must-pass items for 2022, including FY 2023 government funding and the extension of the National Flood Insurance Program, the FY 2023 National Defense Authorization Act, and FDA User Fee Agreements. A number of economic and geopolitical variables will continue to draw the attention of legislators, including additional COVID variants and vaccine effectiveness, inflation indica- tors (including gas prices), global recession indicators, the Russia-Ukraine crisis, a looming global food insecurity cri- sis, China/Taiwan issues, supply chain issues, and potential for cyber-attacks.

Administration Priorities

The Biden Administration's current focus is addressing inflation, the rising cost of gas, supply chain interruptions, Russia/Ukraine, and responding to the *Dobbs v. Jackson Women's Health Organization* decision. Additional priorities include passage of a slimmed down version of Build Back Better/budget reconciliation, particularly as the September 30th deadline approaches for when the budget resolution that includes instructions for budget reconciliation expires.

The Biden Administration released the President's Fiscal Year 2023 budget earlier this year, which kicked off the Fiscal Year 2023 appropriations season. The budget is a collection of documents that contains the budget message of the President, information about the President's budget proposals for a given fiscal year, and other budgetary publications that have been issued throughout the fiscal year. It is a nonbinding, guiding document, and not a public law.

The Biden Administration also continues to emphasize the implementation of the Infrastructure Investment and Jobs Act as a key policy victory for our country heading into the midterm elections. President Biden will continue to tout the bill while traveling across the country, promoting announcements of new domestic manufacturing facilities, and highlighting the impacts of federal infrastructure investment to the U.S economy.

Looking ahead to next year, Congress will turn its attention to the national debt. Recent projections estimate that the debt limit will be reached in Q3 of 2023, which could be a much different political environment than we find our- selves in today. Variables for next year include President Biden's plans for a second term, the influence of former President Donald Trump, economic conditions, and the power concentration in the conservative/populist and liberal/progressive wings of the two political parties. One scenario may involve a shift of party control in the U.S. House of Representatives and/or U.S. Senate after the 2022 midterm elections. Should that happen, we could see the next debt limit deadline used as leverage to enact fiscal reforms— setting up a battle similar to 2011, which led to the sequestration restraints of the Budget Control Act of 2011.

Committee Activity

During the last few months, both the House Financial Ser- vices Committee and the Senate Banking Committee have received their semi-annual reports from the Chairman of the Federal Reserve, Secretary of the Treasury, and the Di- rector of the Consumer Financial Protection Bureau. The Banking Committee was also able to confirm a number of nominees to serve on the Federal Reserve Board of Governors after one of their nominees, Sarah Bloom Raskin, withdrew her nomination following intense Republican opposition. In the last few weeks, the Committee also held hearings regarding the reauthorization of the National Flood Insurance Program, hearing from program experts and from FEMA representatives in two separate hearings. Both committees held a variety of hearings intent on examining current inflationary pressures, supply chain concerns, and potential predatory practices in the housing market.

Build Back Better

The President Biden's long-stalled "Build Back Better" (BBB) agenda has been resuscitated as Senate Majority Leader Chuck Schumer (D-NY) and Sen. Joe Manchin (D- WV) restarted negotiations. If a deal is reached in the next few days/weeks, it is possible that the Senate may have to delay August recess to move forward on BBB, or consider the bill after recess and before September 30th.

CCIA Meetings

Summer Meetings & Actuarial Symposium

Marriott Magnificent Mile—Chicago, IL

August 1-3, 2022

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