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# **PART I: ALL THINGS EV— REGULATORY AND COMMERCIAL CONSIDERATIONS**

September 14, 2022

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# Morgan Lewis Automotive Hour Webinar Series

Series of automotive industry focused webinars led by members of the Morgan Lewis global automotive team. The 8-part 2022 program is designed to provide a comprehensive overview on a variety of topics related to clients in the automotive industry. Upcoming sessions:

- **September 28** | Part II: All Things EV—Finance and Transactional Considerations
- **November 9** | European Antitrust and Other Regulatory Updates for the Automotive Industry



# Presenters



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# Agenda



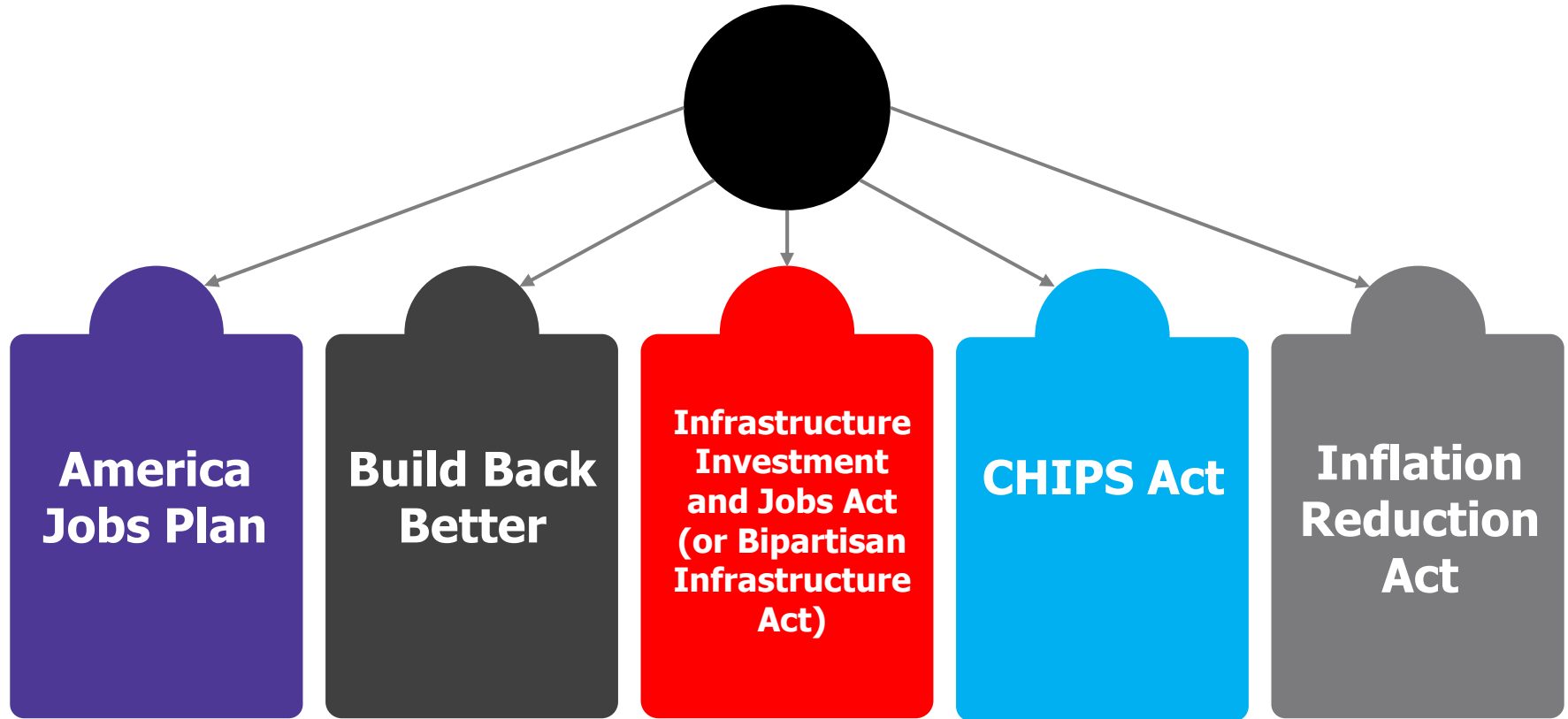
Legislation and  
Developments

Contract  
Considerations

Key Commercial  
Considerations

# Legislation and Developments

# How Did We Get Here?



# In the Beginning, there was the...

## America Jobs Plan/Build back Better

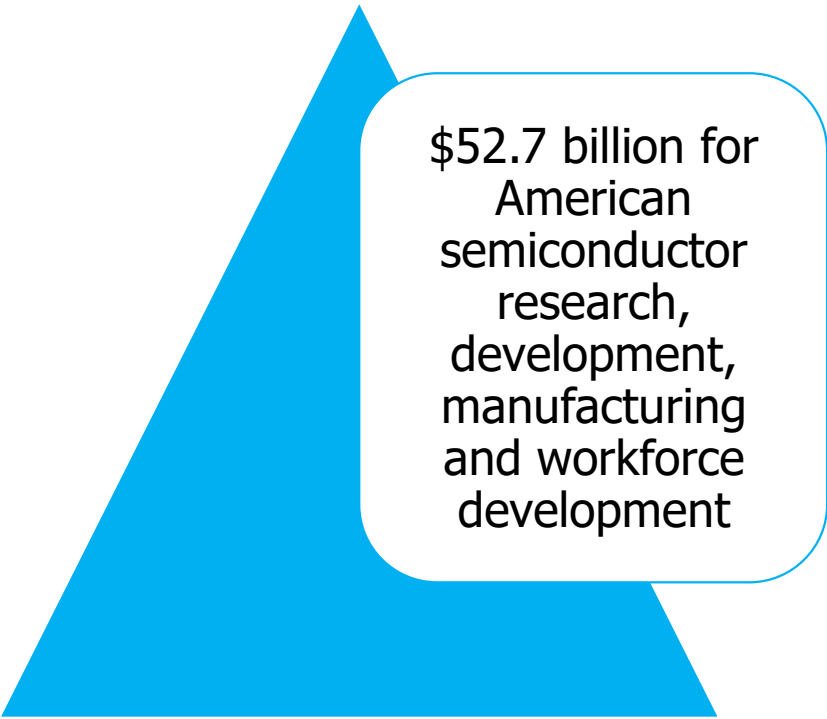
- Original Biden plan would:
  - Invest in electric vehicles, including consumer rebates to purchase electric vehicles, grants and incentives to build 500,000 charging stations, and replacing and electrifying federal vehicle fleet.
  - Provide grants for semiconductor manufacturing and research and clean energy tax credits.
- America Jobs Plan had a \$4.0 trillion price tag and Build Back Better at \$3.5 trillion.
  - Neither was signed into law.

# Infrastructure Investment and Jobs Act (PL 117-58)

Provided funding for  
national network of 500,000  
E/V charging stations



# CHIPS Act (PL 117-167)



\$52.7 billion for  
American  
semiconductor  
research,  
development,  
manufacturing  
and workforce  
development

# Inflation Reduction Act (PL 117-169)

Provides \$369 billion for energy security and climate change initiatives, with incentives for the purchase of electric vehicles.

# Contract Considerations

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# Is the IRA Really About Government Contracts?

There will be some IRA funds awarded to contractors through government grants.

- Federal grants
- State and Local grants

The IRA incorporates certain typical government contract requirements in the tax credits.

- Prevailing wages
- Domestic content

# Government Grants

- Still awaiting implementation requirements by federal and state agencies authorized to utilize Infrastructure funds.
- Government grants that allocate funding for state and federally-funded projects utilizing Infrastructure funding will include unique requirements.
  - Government IP licenses
  - Financial accountability utilizing government requirements
  - Generally, cost share by participant is required
  - Certification requirements
    - Can lead to False Claims Act liability

# Prevailing Wages

- Expanded Tax credits offer bonus credits for companies who pay prevailing wages
  - Minimum prevailing wage based on job position and geographic location
  - Required benefits
- Compliance oversight required to ensure appropriate wages and benefits
- Likely certification to receive bonus credits
- Applies to both construction and repair/maintenance

# Domestic Content

- For bonus credits, the contractor must certify that –
  - All the steel, iron or manufactured product incorporated into the project was produced in the United States
- Steel and iron products will require 100% domestic sourcing
- Manufactured goods will require a minimum amount of U.S. content plus U.S. manufacturing
- May include waivers such as
  - de minimus
  - incidental items

# Key Commercial Considerations



# Charging Infrastructure: Access

## EV Infrastructure Funding

- The BIL includes a total of up to \$7.5 billion in dedicated funding to help make EV chargers publicly accessible. That \$7.5 billion is comprised of two programs:
  - A \$5 billion formula program known as the National Electric Vehicle Infrastructure Formula Program (NEVI)
  - A \$2.5 billion discretionary grant program for charging and fueling

**The administration of the federal funds begins with an EV infrastructure deployment plan.**

Each state is required to develop and submit a plan to the FHA for review and approval before any NEVI funding will be made available to the state.

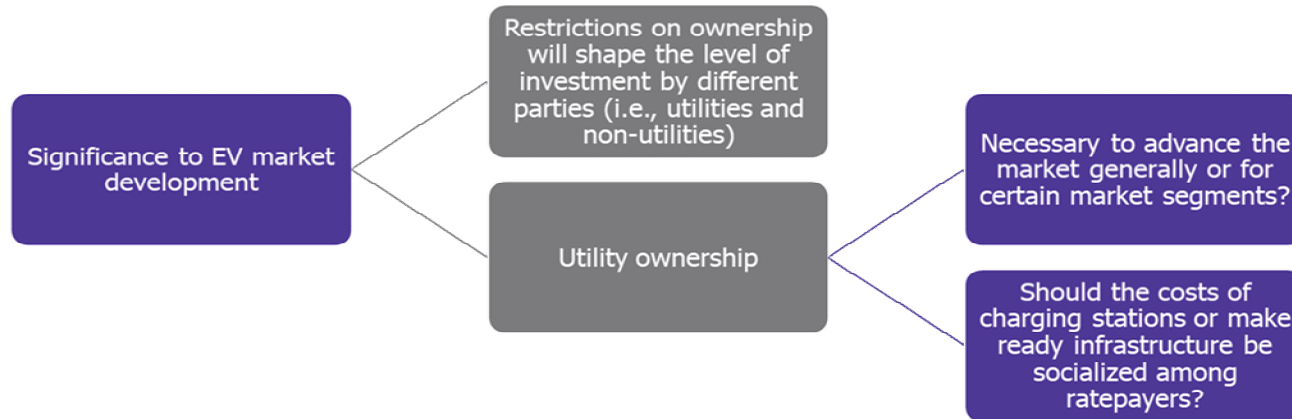
**All states must have submitted a plan no later than Aug. 1, and the FHA is obligated to approve eligible plans by Sept. 30.**

- Plans will be reviewed on a rolling basis.
- Until a plan is approved, a state is not permitted to apportion any funding allocated to that state under the application of the NEVI formula.

**Eligible projects in each state's plan shall be no further than one mile from interstate exits or highway intersections along designated corridors. Further, new charging infrastructure should be located no more than 50 miles from planned or existing stations along designated corridors.**

# Charging Infrastructure: Ownership and Operation

- This issue is one that is resolved on a state-by-state basis and, at its core, concerns whether utilities or non-utility entities are permitted to own a charging station or whether utilities are permitted to own only portions of the charging infrastructure while non-utility entities own the actual charging station.



# Commercial Agreements

## Site Host Agreements

Every entity that will own and operate EV infrastructure needs an advantageous site host agreement between itself and the site host if the entity does not own the real estate.

## Services Agreements

An entity that provides EV capability through reliance on a third-party CPO needs adequate commercial documentation.

# Commercial Opportunities

- V2G Capability
  - Appropriate opportunity for electric fleet circumstances and owners/operators of EV fleet bidirectional charging assets
  - Provides access to markets revenue stream during period of fleet non-operation
- Conversion of retail outlets to EV charging capability
  - Potential increased revenue opportunities from customer present >10 min.
  - Starbucks, Volvo, Charging recent PR announcement
- Charging station ownership monetization strategies
  - Price arbitrage opportunity for energy sales to EV customers
- Access to federal funding

# What about the IRA?

## New vehicle tax credit

- Change to mechanism whereby purchasers qualify

## Used vehicle tax credit

## The infamous Section 45W

# Questions?

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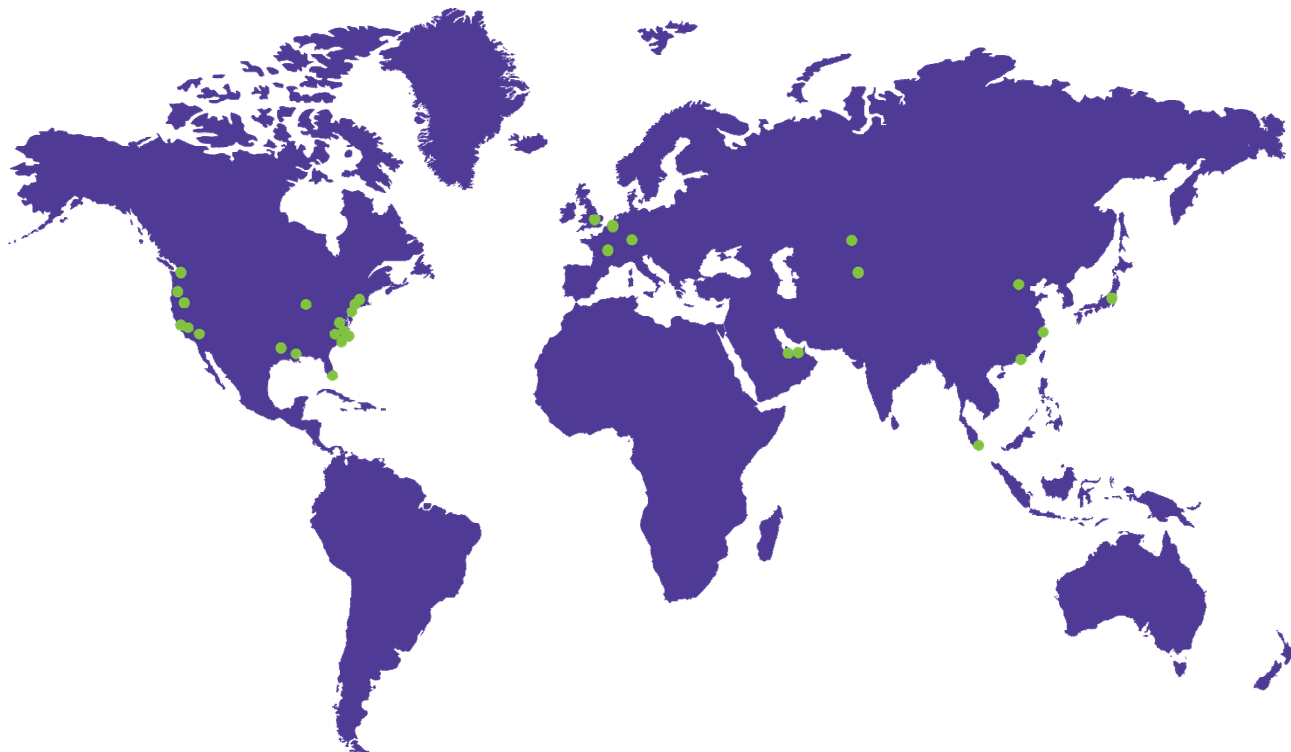


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