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The Impact of the New Inflation Reduction Act on Infrastructure Initiatives

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Congress has injected yet another wave of stimulus funding as the Biden Administration attempts to shape the future of America's infrastructure. On August 16, 2022, President Biden signed into law House Bill 5376, known as the Inflation Reduction Act (IRA). The IRA, like the American Rescue Plan Act (ARPA) and the Infrastructure Investment and Jobs Act (IIJA) that preceded it, establishes several funding opportunities and subsidies for key infrastructure industries. Funds will be directed to state governments that can then allocate moneys to qualifying projects. The IRA also establishes key tax incentives and grant opportunities that will come directly from the federal government. It attempts to finance these investments with new reforms to federal tax and health care policy.

INVESTMENTS TO COMBAT CLIMATE CHANGE

IRA proponents contend that the new legislation will reduce carbon emissions by approximately 40%, relative to 2005 levels, over the next decade. The IRA intends to reach that emissions goal, in part, by encouraging consumers to adopt electrification measures and solar energy.

Households and multi-family buildings will be eligible to receive up to $14,000 in direct consumer rebates to install heat pumps or other energy efficiency measures. A tax credit is also available for households installing rooftop solar photovoltaic cells and energy storage systems based on 30% of the asset's value. Another tax credit up to $7,500 is available for individuals purchasing a new electric vehicle and up to $4,000 if one is purchasing a used electric vehicle. Commercial vehicle operators will be able to claim tax credits up to $40,000 when purchasing new electric vehicles.

Approximately $4.3 billion is also authorized through September 30, 2031, to implement a home energy performance rebate program through the U.S. Treasury. The Treasury will provide grants to state energy offices to fund home energy efficiency evaluations and retrofits. Rebate amounts from $2,000 to $4,000, in addition to 50% of the efficiency project cost, are available for individual homeowners, and up to $400,000 in rebates are available for multi-family dwellings. Additional grant funding under the IRA is designated for specific efficiency initiatives, such as an electric home rebate program for appliance upgrades and programs targeting Indian Tribes. State lawmakers, developers and energy system operators should consider how these rebates may be coordinated with integrated resource plans and other future projections.

The IRA also seeks to achieve emission reductions by financing loans and grants for low or zero-emission vehicle producers, transmission facilities and greenhouse gas emission reductions technology. This investment represents billions in funding authorization through September 30, 2028, for infrastructure in addition to previous authorizations under ARPA and IIJA. The Treasury, in concert with the Office of Clean Energy Demonstrations, will distribute both loans and grants.

Another of the IRA's methods to reduce greenhouse gas emissions is to reform the federal production tax credit. Production tax credits are available to renewable energy facility developers and operators based on the amount of generated electricity. The IRA reduces the base production tax credit value to 0.3 cents per kilowatt hour base value but enables taxpayers to quintuple the base credit to 1.5 cents per kilowatt hour by satisfying specified prevailing wage and apprenticeship requirements. The IRA also increases the production tax credits by 10% when renewable energy facilities are constructed in areas where a coal mine or power plant recently ceased operations or where unemployment has increased due to job losses in the fossil fuel sector. Utility operators may want to consider these enhancements as they also use securitization to shutter coal facilities.

REVISIONS TO THE CLEAN AIR ACT

An underappreciated part of the IRA is its treatment of "carbon dioxide" under the Clean Air Act. Among other things, the IRA contains provisions appropriating additional funds to the U.S. Environmental Protection Agency (EPA) to study environmental and public health effects of fuel additives and establish testing protocols to evaluate the impacts of fuel additives under the Clean Air Act. Importantly, the IRA defines "greenhouse gas" in those provisions as "the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride."

The explicit inclusion of carbon dioxide within the scope of "air pollutant" under the Clean Air Act appears to be in response to the U.S. Supreme Court's recent *West Virginia v. EPA* decision. That case held that the EPA could not curtail greenhouse gas emissions, like carbon dioxide, by requiring power plans to shift generation to lower emitted fuel sources. The substantive impact of the IRA's definition of "air pollutant" will likely be litigated as the EPA continues to attempt to regulate greenhouse gases and respond to *West Virginia v. EPA*.

CHANGES TO CORPORATE TAX RATES

The IRA attempts to balance the aforementioned federal investments to combat climate change by increasing taxes on certain corporations and individuals. In particular, certain corporations will be subject to a minimum tax rate of 15% on financial statement income, limiting the value of other tax incentives. This minimum tax rate will apply to U.S. corporations (other than regulated investment companies, real estate investment trusts, and S corporations) with an average annual adjusted financial statement income (AFSI) of at least $1 billion based on the past three taxable years. The calculation for the average annual AFSI does not consider net operating losses.

Publicly traded businesses repurchasing stock are also subject to a 1% excise tax under the IRA. The excise tax will apply regardless of whether the stock repurchase is from a taxable or tax-exempt shareholder. It will not generally apply to foreign corporations but will do so when a U.S. affiliate of a foreign corporation repurchases stock.

Aside from substantive tax law changes, the IRA authorizes an additional $80 billion to the U.S. Internal Revenue Service's (IRS) appropriations through September 30, 2031. The intent of this added funding is to hire additional personnel and increase oversight over unpaid taxes, criminal investigations and digital asset monitoring. Treasury Secretary Janet Yellen has directed the IRS not to expend any of these new funds on audits for businesses and households making less than $400,000 a year. It is ultimately unclear whether the IRS, while increasing auditing activity, will seek to distinguish between low and high-income earners and corporations, or if it will simply assign non-IRA funds to audits of lower-income earners and corporations, and IRA funds to higher-income earner and corporation audits.

IMPACTS ON HEALTH CARE

One of the IRA's most significant new measures is Medicare's newly-empowered ability to negotiate prices for participants' prescription drugs. This is intended to enable the federal government to reduce overall program costs and drug prices for enrollees. These savings are then meant to support the infrastructure funding discussed above. The IRA also limits the amount of additional funds enrollees will need to contribute annually to their medication to $2,000 and caps the monthly cost of insulin to $35. Drug manufacturers receiving Medicare dollars are also required to rebate money should they raise drug prices at rates higher than inflation.

In addition, the IRA extends the premium subsidies under the Affordable Care Act until 2024. They were previously set to expire at the end of 2022.

Stinson's Infrastructure Task Force will monitor the IRA's implementation and its potential impact on firm clients. This alert spotlights just a few of the developments included in the 300-page IRA. If you have any questions about how this legislation may affect your business, reach out to a Task Force member today.

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