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Implementing the Inflation Reduction Act: Progress to Date and Risks from a Changing Administration

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IMPLEMENTING THE INFLATION REDUCTION ACT:

PROGRESS TO DATE AND RISKS FROM A CHANGING ADMINISTRATION

SEPTEMBER 2024

Romany M. Webb, Martin Lockman, & Emma Shumway

Columbia Law School, Sabin Center for Climate Change Law

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INTRODUCTION

The Inflation Reduction Act of 2022 ("IRA") is the largest investment in climate change mitigation and adaptation in American history. The IRA appropriates more than $142 billion to carry out activities designed to reduce greenhouse gas emissions and protect against the impacts of climate change. This includes up to $37 billion in appropriations for federal loans and loan guarantees, and nearly $105 billion allocated for grants, awards, and other direct spending by federal agencies.[1] In addition, the IRA creates and expands a number of tax credit programs designed to support a broad range of climate-related activities, including investments in clean and renewable energy, electric vehicles and vehicle charging infrastructure, and energy efficiency projects. The total value of these tax credits is hard to evaluate since many of the IRA's credits are not capped,[2] but recent studies estimate that Americans may claim between $780 billion and $1.2 trillion in tax credits over the IRA's 10-year life.[3] While the spending and tax credit provisions comprise the bulk of the IRA, the Act also makes important changes to existing federal land leasing programs, mandates updates to existing greenhouse gas reporting regulations, and requires the Environmental Protection Agency ("EPA") to collect fees for certain methane emissions.

The next Presidential election may jeopardize the IRA's climate programs. Project 2025, a policy blueprint published by the Heritage Foundation, recommends that the next conservative administration should push for full repeal of the IRA.[4] Perhaps recognizing that could be difficult to achieve,[5] Project 2025 also outlines a suite of measures that a future conservative administration may take to undermine the IRA, should it remain in place.[6] These include measures to redirect climate-related funds[7] and, more broadly, roll back

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[1] In this paper, we distinguish between "loan" and "non-loan" programs. Within the "loan" programs category, we include amounts that are allocated to federal agencies for use in providing loans, or loan guarantees, for specified classes of projects. *See e.g.,* IRA § 50142. Within the non-loan programs category, we include amounts that are allocated to federal agencies to provide grants or other direct financial assistance to third parties (e.g., states, municipalities, tribal governments, nonprofit organizations, etc. *See e.g.,* IRA § 60101. It should be noted that some sections of the IRA (e.g., § 60104) authorize agencies to use allocated funds to provide either loans or grants. Those amounts are included within the "loan" program category.

[2] *See* Jim Tankersley, *Why the Cost of Biden's Climate Law Keeps Going Up*, N.Y. TIMES (Feb. 8, 2024), https://www.nytimes.com/2024/02/08/us/politics/biden-inflation-reduction-act-cost.html.

[3] *The Inflation Reduction Act's Benefits and Costs*, U.S. TREASURY DEPT. (Mar. 1, 2024), https://home.treasury.gov/news/featured-stories/the-inflation-reduction-acts-benefits-and-costs.

[4] *See* Bernard L. McNamee, *Department of Energy and Related Commissions*, 363, 365 *in* 2025 PRESIDENTIAL TRANSITION PROJECT (2024), https://static.project2025.org/2025_MandateForLeadership_CHAPTER-12.pdf (proposing to decrease the Department of Energy's support for renewable energy projects).

[5] Emma Dumain & Kelsey Brugger, *Republicans fight over green subsidies heads toward a boiling point,* Politico (Aug. 25, 2024), https://www.politico.com/news/2024/08/25/republican-fight-inflation-reduction-act-00176223.

[6] *See* Thomas F. Gilman, *Department of Commerce*, 663, 675 *in* 2025 PRESIDENTIAL TRANSITION PROJECT (2024), https://static.project2025.org/2025_MandateForLeadership_CHAPTER-21.pdf (calling for the breakup of NOAA, which the author calls "one of the main drivers of the climate change alarm industry").

[7] McNamee, *supra* note 4, at 380 (proposing to decrease the Department of Energy's support for renewable energy projects).

environmental protections.[8] Such proposals threaten to thwart climate action in the United States, and undo hard-won gains in the global fight against climate change.

This paper reviews the status of implementation of the IRA's climate programs, and evaluates the vulnerability of those to unilateral executive branch action under a hostile presidential administration. For the purposes of our analysis, we assume that Congress will not repeal the IRA in whole or in part, but that a future administration may seek to limit its implementation through executive action. Our aim is to determine the legal vulnerability of IRA programs and identify legal constraints on a future administration's ability to interfere with the programs' implementation. We note that other factors, including political factors, may also constrain what a future administration can do, but that is not the focus of this paper.

Key Findings

- **Significant spending has already occurred under the IRA. Of the $105 billion allocated for climate-related grant programs,[9] almost half had already been spent or committed to agency programs as of July 17, 2024, and additional funds (possibly 23% or more of the total available) will likely be committed before President Biden leaves office.[10]** As of July 17, 2024, almost 37% of the funds available under IRA grant programs or roughly $38.75 billion was covered by award agreements or similarly binding allocations to third party recipients. A further $12.57 billion had been allocated to internal agency spending, and at least $29 billion grant funding was tied to open funding opportunities or otherwise expected to be awarded in 2024. This is a conservative estimate and it is possible that larger amounts will be awarded before President Biden leaves office.
- **A future administration would have limited opportunities to claw back funds already spent under the IRA.** This would require the termination of individual award agreements, which can only occur in limited circumstances. Termination of awards based solely on a change in administration priorities could be challenged in court and those challenges would have a high probability of success.

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[8] *See generally* Mandy M. Gunasekara, *Environmental Protection Agency*, 417 *in* 2025 PRESIDENTIAL TRANSITION PROJECT (2024) https://static.project2025.org/2025_MandateForLeadership_CHAPTER-13.pdf.

[9] This total excludes amounts allocated to loan and mixed loan / grant programs. *See supra* note 1.

[10] *A note on data collection*: Our assessment of spending under IRA programs is based on publicly-available sources, including agency press releases, agency-run spending trackers, and other similar sources. These agency records represent the best and most accurate publicly-available source of information on IRA program spending. We note that the Climate Program Portal has compiled information related to many of the Biden Administration's climate programs. We referred to the Climate Program Portal in preparing this report, but also looked at other sources and, as a result, our dataset expands upon the database compiled by the Climate Program Portal in several areas. To the authors' knowledge, this paper represents the most thorough account of IRA climate spending to date, but still may not be comprehensive. This paper is not intended to substitute for, or rebut, agency accounts of IRA spending. On the contrary, it relies on them. We note, however, that there is often a delay between when funds are committed and when that commitment is publicly announced by the relevant agency.

- **A sizable share of IRA funds—possibly 23% or more of the $105 billion available for grant programs—may remain unspent at the end of President Biden's term.** This includes approximately $14 billion that was allocated under the IRA but is not appropriated, and thus not available to be spent, until fiscal year 2025 and 2026.
- **A future administration may seek to redirect or withhold unspent funds, but there are some important limits on what it could do.** No more than 10% of the funds allocated to any IRA program could be transferred to another use, but that could still be a significant amount for some programs. Withholding of IRA funds would require Congressional approval under the Impoundment Control Act. If Congressional approval were not obtained, the withholding could be challenged in court, but issues related to standing, ripeness, and mootness would need to be navigated.
- **Opportunities for executive interference with the IRA's tax programs are fairly limited, but any interference is likely to be deeply damaging**. The IRA's tax provisions leave less room for executive interference because they directly change the tax code, and generally take effect without the need for implementing regulations. However, several recent or active regulations could be disrupted by a hostile administration, creating significant uncertainty for taxpayers. This uncertainty could increase the risk and cost of private investments that the IRA tax credits are intended to encourage and thus limit the IRA's effectiveness in driving private sector action on climate change.
- **With two notable exceptions, the other climate-related provisions in the IRA have been fully implemented, and are at low risk of roll-back by a hostile administration.** At greatest risk are actions taken by EPA to address methane emissions from oil and gas operations. Regulations recently finalized by EPA to update methane emissions reporting requirements could be targeted for revision by a future administration, but this would require a full notice-and-comment rulemaking process, which would take time to complete. A future administration might also take steps to delay or block implementation of the methane waste emissions charge established in the IRA. This is a particular risk if EPA does not finalize relevant regulations before President Biden leaves office.

IRA SPENDING PROGRAMS

The IRA was enacted through the Congressional budget reconciliation process and thus is, at its core, a spending bill. It allocates more than $142.3 billion for climate-related grant, loan, and other spending programs. Some of these are new programs created by the IRA, while others are pre-existing programs that received new allocations under the Act. The programs are spread throughout 15 federal agencies, commissions, and inter-agency bodies, and several require federal bodies to work directly with states, territories, and tribal governments to expend funds.

In the two years since the IRA's passage, federal bodies have made significant progress toward implementing the IRA's spending programs. Even so, significant amounts of IRA funds remain unspent. In

this section, we assess the legal vulnerability of IRA spending programs to reversal, repurposing, or other interference by the next presidential administration.

Implementation of IRA Spending Programs to Date

Our research breaks IRA spending into four categories[11] as follows:

- **Awarded**: Funds that have been committed by contract or other binding, enforceable allocation mechanism to a specific third-party recipient, including individuals, companies, organizations, and state, local, and tribal governments. We take an intentionally conservative approach,[12] and exclude a number of in-progress grants and loans that are the subject of active negotiation between potential recipients and federal agencies.[13]
- **Pending**: Funds that are expected to be awarded (as defined above) before the end of 2024. This includes funds that are tied to a request for proposals ("RFP"), funding opportunity announcement ("FOA"), or similar call for grant or loan applications that has closed but for which awards have not yet been finalized. In many cases, federal agencies have announced award recipients, but the award agreements are still in the process of being negotiated. Since final agreements have not been announced, we categorize these amounts as pending, rather than awarded. It should also be noted that our pending category only includes amounts with respect to which a final agreement or other binding allocation is expected in 2024 (based on agency announcements).
- **Available**: Funds tied to an open RFP, FOA, or similar open call for grant or loan applications.
- **Administrative**: Funds that have been appropriated to support the operations of a federal agency. Since this funding is generally used internally and does not result in external award announcements, we do not assess what percentage of these funds has been spent.
- **Unassigned**: Funds appropriated under the IRA that do not fall within the awarded, pending, available, or administrative categories above. This includes some funds associated with closed opportunities that have not yet been awarded and for which we have been unable to identify an award

[11] Across all categories, we differentiate between loan and non-loan grant programs, and often present spending data for grant programs only. Including loan announcements in spending totals may give an exaggerated picture of an agency's activity, because money appropriated for loans and guarantees may be leveraged, recycled, or intermingled with private funds. For example, a 10-year loan program with a $1 billion appropriation could announce many billions in loans and loan guarantees over its life.

[12] We take this conservative approach because the goal of the project is to assess the legal vulnerability of IRA programs to interference by a changing administration. As explained further below, from a legal perspective, funds that have already been committed by agreement or other binding, enforceable allocation mechanism are generally at lower risk than funds for which an agency has, for example, made an award announcement but not yet finalized the associated agreement. While we note that there may be non-legal challenges to reallocating funds for which such an award announcement has been made, including potentially significant political challenges, that is not the focus of this paper and is not discussed further.

[13] These in-progress grants and loans are included in our "pending" category if the final agreement or other binding allocation is expected before the end of 2024.

timeline. It also includes funds for which RPPs, FOAs, or similar calls for applications have not yet been issued.

Based on these categories, we estimate the breakdown of funds as of July 17, 2024 as follows:

- **Awarded**: Federal agencies have awarded more than $66.76 billion under the IRA. This includes $28.01 billion awarded via loan and loan guarantee programs, as well as $38.75 billion awarded under non-loan grants programs. The non-loan grant program awards represent approximately 36.91% of the total funds available under the IRA for non-loan grant programs.
- **Pending**: At least $31.14 billion, comprising:
  - $14.80 billion in federal loans and loan guarantees; and
  - $16.34 billion in non-loan grants and other awards.
- **Available**: $13.88 billion, comprising:
  - $1.19 billion in loans and loan guarantees; and
  - $12.69 billion in non-loan grants and other awards.
- **Administrative**: $12.57 billion has been appropriated to federal agencies to support internal operations.[14]
- **Unassigned**: $24.62 billion appropriated for non-loan grant programs is unassigned. We are unable to accurately estimate the amount of unassigned funds associated with loan programs.[15]

The above estimates are accurate as of July 17, 2024. Since that date, federal agencies have announced several large awards under the IRA, including $4.3 billion in Climate Pollution Reduction Grants under IRA section 60114,[16] $325 million in Environmental and Climate Justice Community Change Grants under section 60201,[17] and $291 million in grants to support Sustainable Aviation Fuels under section 40007.[18]

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[14] As noted above, our data collection methodology provides limited visibility into agency progress toward spending these funds.

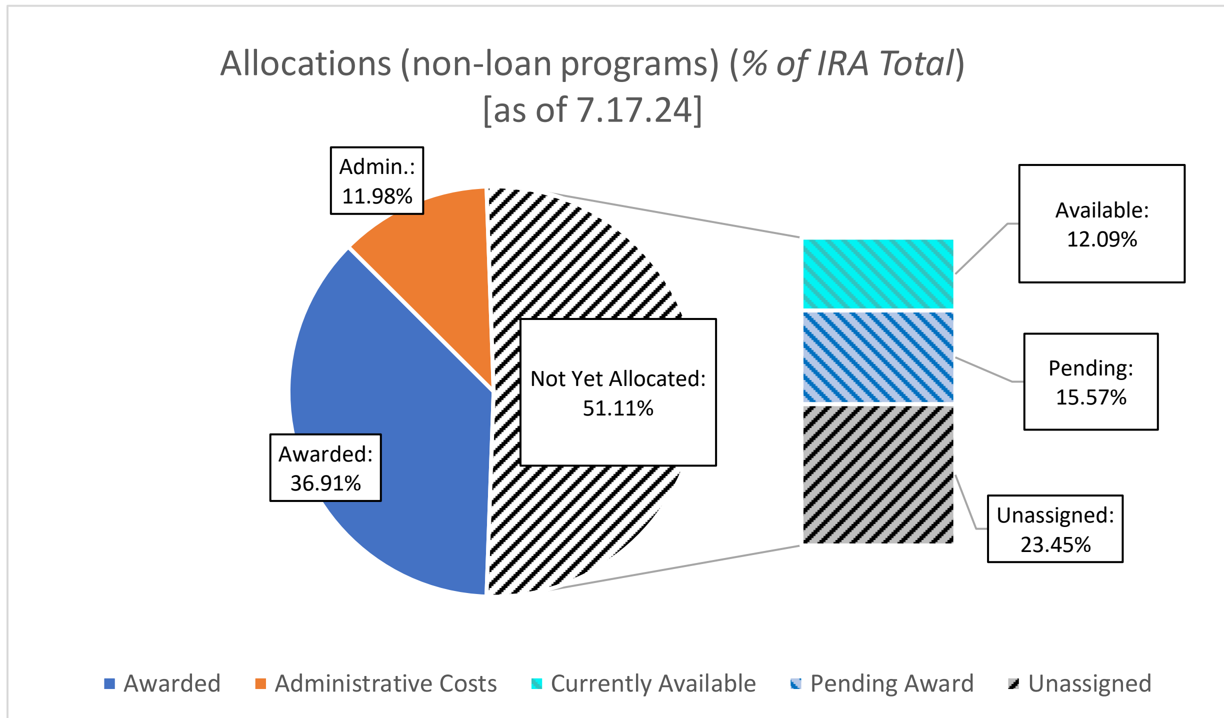
[15] *See supra* note 11.

[16] Press Release, *Env'tl Protection Agency, Biden-Harris Administration Announces $4.3 Billion in Grants for Community-Driven Solutions to Cut Climate Pollution Across America* (July 22, 2024), https://www.epa.gov/newsreleases/biden-harris-administration-announces-43-billion-grants-community-driven-solutions-cut.

[17] Press Release, *Env'tl Protection Agency, Biden-Harris Administration Announces More Than $325 Million in Environmental and Climate Justice Community Change Grants* (July 24, 2024), https://www.epa.gov/newsreleases/biden-harris-administration-announces-more-325-million-environmental-and-climate.

[18] *Fueling Aviation's Sustainable Transition (FAST) Grants*, U.S. DEPT. TRANSPORTATION (Aug. 16, 2024), https://www.faa.gov/general/fueling-aviations-sustainable-transition-fast-grants.

Figure 1: IRA Allocations (non-loan programs) (% of IRA Total)



It is clear, then, that a large share of the funds appropriated for non-loan programs under the IRA will likely have been committed before President Biden leaves office. We estimate the figure at between 64.46% and 76.55% but it could be higher.[19] This represents very significant progress in just two years. Nevertheless, a sizable share of IRA funds may remain unallocated when the next President takes office.

As noted above, 15 different federal bodies are responsible for implementing climate-related spending programs established or expanded via the IRA. Each of these federal bodies has taken steps to implement IRA programs, but some have made more progress than others. Figures 2 and 3 below show the status of non-loan spending among the seven federal bodies with the largest IRA allocations. It should be noted that, even where significant amounts remain unassigned under individual IRA programs, this does not necessarily mean that no action has been taken towards implementing the relevant programs. Many agencies are making funds available in tranches and have published detailed plans for spending currently unassigned amounts in coming months or years.

[19] As noted above, our estimates are based on agency announcements as of July 17, 2024. Agencies have made additional announcements since that date and further announcements may be made in the latter part of the year.

Figure 2: Agency IRA Non-Loan Spending (in millions)

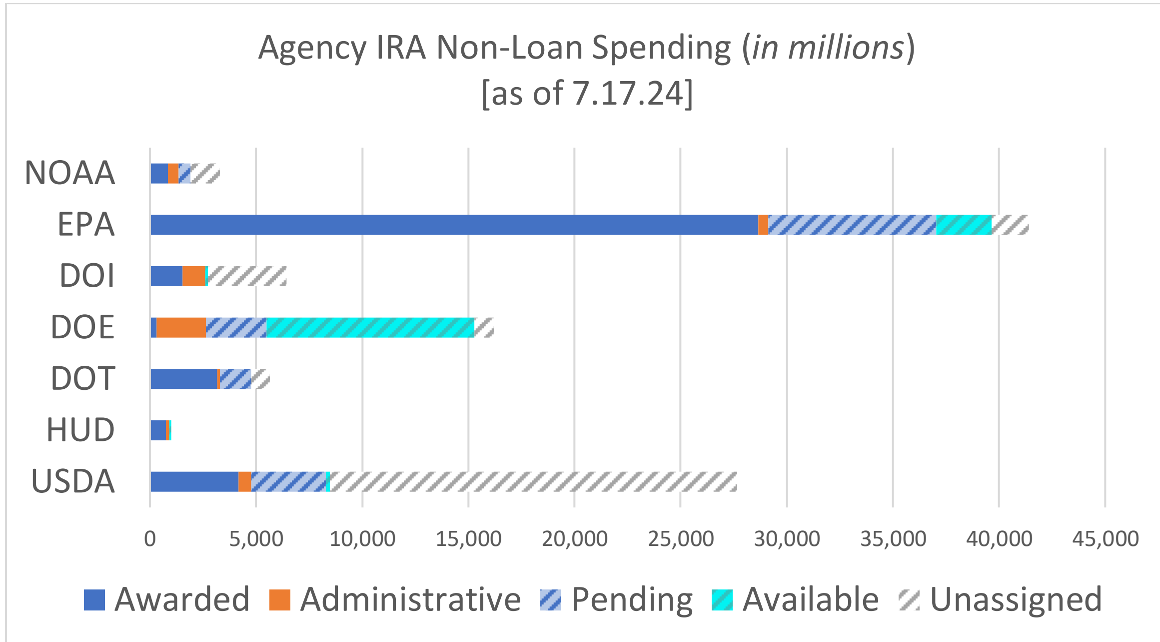
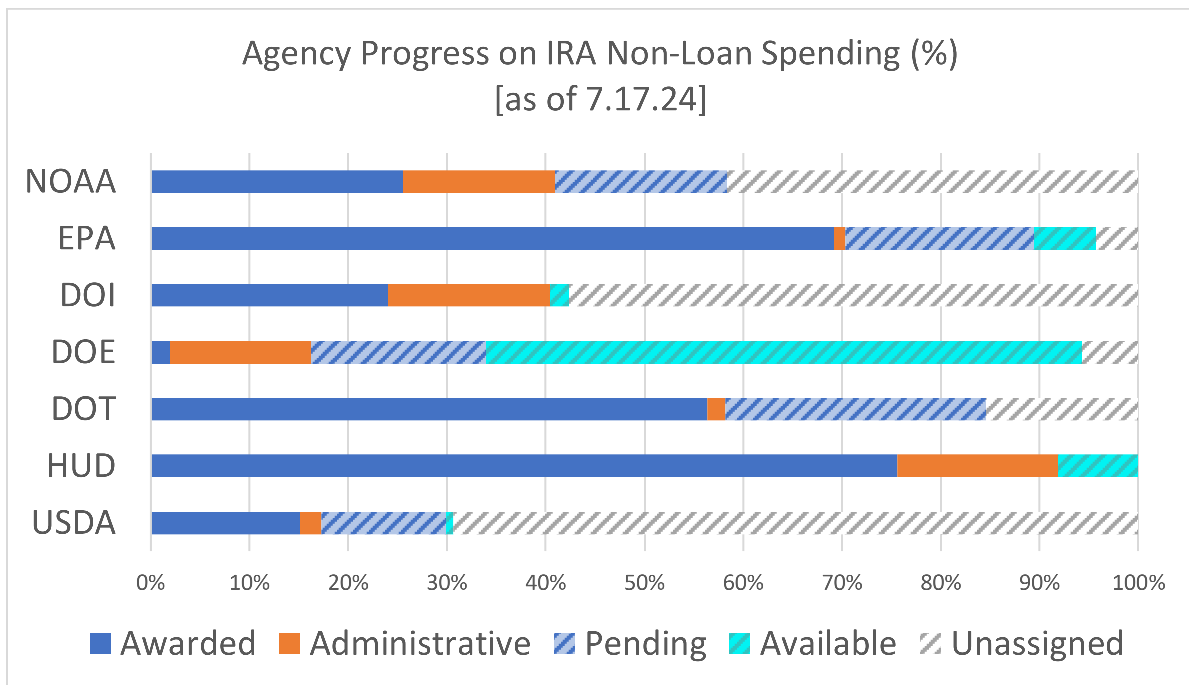


Figure 3: Agency Progress on IRA Non-Loan Spending (%)



As shown above, EPA had awarded the most funds as of July 17, 2024, but other agencies had also made significant progress. Particularly notable is the Department of Housing and Urban Development ("HUD"), which had awarded almost 75% of funds made available to it under the IRA as of July 17, 2024. The Department of Energy ("DOE") and Department of Transportation ("DOT") have also made large awards and have significant pending and available funds. While spending by the U.S. Department of Agriculture ("USDA") appears low, this is, in part, because the IRA allocates funds to USDA over several years and thus some of the funding has not yet become available to the agency.

Risks to IRA Spending Programs from a Hostile Administration

There are three primary ways in which a hostile administration could, in theory, interfere with the implementation of IRA spending programs.[20] First, a hostile administration could seek to claw back funds already awarded under the IRA, but this would be difficult and could be challenged in court. Second, where IRA funds remain unspent, a hostile administration could attempt to reallocate those funds to non-climate programs. There are, however, important limits on what a hostile administration could do in this regard. Most notably, no more than 10% of the funds allocated to any IRA program could be reallocated, though this could still be a significant amount for some programs. Third and finally, a hostile administration could avoid making further awards under IRA programs, and thus effectively withhold any unspent IRA funds. This would arguably be a violation of law and could be challenged in court, but this would require strategic litigating on issues of standing, ripeness, and mootness.

Potential for Claw Back of Funds Already Awarded

A hostile administration may try to claw back IRA funds that have already been awarded by terminating individual awards. Pursuant to Guidance issued by the Office of Management and Budget ("OMB"), an award agreement may allow for termination in four situations: (1) due to a grantee's failure to comply, (2) upon mutual agreement, (3) by the grantee with reasonable notice, and (4) to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.[21] Termination provisions must be included in each individual award agreement, but as award agreements are not made public, it is not known whether all of these grounds for termination have been specified in every IRA award agreement. It is possible that the Biden administration has written award agreements so as to only allow termination under the first three grounds. If award agreements also allow for termination on ground (4),

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[20] Courts have had little occasion to hear cases on executive attempts to circumvent mandatory appropriations as this is largely a Trump-era phenomenon. Additionally, courts have historically been averse to hearing cases on appropriations due to the political implications of interposing themselves between the Executive and Legislative branches. Thus, there is an inherent degree of uncertainty surrounding how courts would treat claims of unlawful clawback, reprogramming, or withholding under the IRA.

[21] *Guidance for Federal Financial Assistance*, 89 Fed. Reg. 30046 (Apr. 22, 2024), https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance; *Guidance for Grants and Agreements*, 85 Fed. Reg. 49506 (Aug. 13, 2020), https://www.federalregister.gov/documents/2020/08/13/2020-17468/guidance-for-grants-and-agreements.

that could, at least in theory, give a hostile administration greater discretion to terminate IRA awards. Agencies might seek to argue that shifting administrative priorities justify termination of IRA awards, but that argument is unlikely to be successful.

If a hostile administration were to unlawfully terminate an award, the awardee may be able to sue for breach of contract, depending on the terms of the award agreement.[22] The awardee could also file suit under the Administrative Procedure Act ("APA").[23] Broadly, under the APA, an injured party can bring suit for unlawful agency action. Termination of an award would be unlawful if the stated grounds for termination—i.e., changing priorities—were not specified as an acceptable reason for termination in the award contract. Additionally, even if an award contract did allow for termination if the award no longer effectuates the program goals or agency priorities, it may be unlawful if the agency priorities conflict with the purpose of the IRA.

As noted above, awards can only be terminated on the grounds that they no longer effectuate agency priorities, "to the extent authorized by law." This limits the scope of agency discretion. In *Healthy Teen Network v. Azar*[24] and *Pol'y & Rsch., LLC v. HHS*,[25] two federal courts found that the premature termination of HHS grants without consideration of the purpose of the statute under which the grant funds were appropriated was arbitrary and capricious.[26] In one of the cases, HHS had sought to justify termination by arguing that continued funding would not be in the best interests of the federal government; the court held that federal interests must be determined based on the purpose of the appropriations statute and could not be set by the agency unilaterally. To determine the statutory purpose, the court relied on language in the appropriations act describing how the funds should be used for that specific program. Like the statute at issue in that case, the IRA similarly describes the purpose for which funds may be used in each provision. For example, IRA section 30002 allocates $837.5 million to HUD to provide grants and loans "to fund projects that improve energy or water efficiency, enhance indoor air quality or sustainability, [etc.]." HUD could not terminate an award made under this section merely on the grounds that, due to a change in administration, it is no longer prioritizing work on energy or water efficiency. Rather, it would have to show that the award itself does not achieve Congressional priorities, which is likely to be much more difficult.

Potential for Transfer, Reprogramming, or Withholding of Funds

To the extent that IRA funds remain unspent when the next President takes office, his/her administration might seek to reallocate those funds and use them for another purpose, or withhold them altogether. With

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[22] As noted above, award agreements are not made public, and thus we have been unable to review the terms of agreements executied under IRA programs. For that reason, the potential for awardees to file suit for breach of contract is not discussed further.

[23] See *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs.,* 313 F. Supp. 3d 62 (D.D.C. 2018); *Healthy Teen Network v. Azar,* 322 F. Supp. 3d 647 (D. Md. 2018).

[24] 322 F. Supp. 3d 647 (D. Md. 2018).

[25] 313 F. Supp. 3d 62 (D.D.C. 2018).

[26] Note that HHS regulations did not include termination for agency priorities at the time, but HHS guidance did.

respect to reallocating funds, federal agencies cannot shift budget authority from one appropriations account to another, or "transfer" funds, without express statutory authority.[27] However, agencies may reprogram budget authority from one activity to another within an appropriations account, subject to restrictions in the appropriations legislation.[28] The 2022 Consolidated Appropriations Act—i.e., the Act that appropriates funds for IRA programs—restricts reprogramming of IRA funds. Specifically, agencies cannot "create[] new programs," "eliminate[] a[n] existing program, project, or activity," or "reduce[] by 10 percent funding for any existing program, project, or activity."[29] Thus, the amount of IRA funds that could be reprogrammed is effectively capped at 10% of the relevant program total, but this could still be a significant amount for some programs. For example, IRA section 50233 allocates $4 billion to the Department of the Interior ("DOI") for drought mitigation and water conservation activities. We estimate that, as of July 17, 2024, had awarded approximately $1.1 million, leaving $2.9 million unassigned.[30] A second Trump administration could, in theory, reprogram up to $400 million and use it for other purposes. However, IRA programs could not be entirely eliminated. Moreover, reprogramming is also limited in that it must be within the same account, and agency accounts can sometimes be quite specific.[31] For example, USDA's Rural Energy for America Program ("REAP"), which is one of the programs funded by the IRA, has its own budget account.[32] Additionally, even where reprogramming is legally permissible, agencies might be reluctant to engage in it for practical or political reasons (e.g., due to a concern about future appropriations).

With a hostile administration in the White House, federal agencies might also attempt to avoid spending appropriated funds altogether, but this would run counter to the IRA's "appropriated mandatory spending" approach, under which Congress mandates specific amounts for specific purposes to be provided in the annual appropriations process.[33] The President is barred from withholding mandatory appropriated funds without congressional approval under the Impoundment Control Act ("ICA").[34] It should be noted that

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[27] 31 U.S.C. §1532.

[28] GAO, Principles of Federal Appropriations Law, "Chapter 3, Availability of Appropriations: Purpose," p. 3-407 (2017).

[29] Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 716 (2022), https://www.govinfo.gov/app/details/PLAW-117publ103.

[30] We note that DOI has recently announced additional funding under IRA § 50233, including a $700 million award for long-term water conservation in the Lower Colorado River Basin that was announced on June 6, 2024. This is not included in our estimate of awarded or pending funds, because the funding announcement does not indicate that an award agreement has already been concluded, or will be concluded before the end of 2024. *See* Press Release, *Dep't of the Interior*, *Biden-Harris Administration Announces $700 Million from President Biden's Investing in America Agenda for Long-Term Water Conservation in the Lower Colorado Basin (June 6, 2024),* https://www.doi.gov/pressreleases/biden-harris-administration-announces-700-million-president-bidens-investing-america.

[31] *See Federal Account Symbols and Titles (FAST) Book*, Treasury Financial Manual Supplement, (May 2024), https://www.fiscal.treasury.gov/files/fast-book/fastbook-may-2024-part1_3.pdf.

[32] *Id*.

[33] *Overview of Funding Mechanisms in the Federal Budget Process, and Selected Examples*, CONGRESSIONAL RESEARCH SERVICE (CRS) (Feb. 5, 2021), https://crsreports.congress.gov/product/pdf/R/R44582.

[34] 2 U.S. Code § 683.

President Trump was found to have violated the ICA during his first administration by withholding Congressional funds intended for Ukraine,[35] and the 2024 Trump campaign maintains that the president has the constitutional power to impound.[36] Although this claim is relatively farfetched,[37] if the ICA were struck down as unconstitutional for impinging on the president's alleged power to impound, a second Trump administration could withhold appropriated funds with little to no difficulty.

A hostile administration's unlawful reprogramming, transfer, or failure to spend funds would arguably be in violation of the IRA and associated appropriations act (most often the 2022 Consolidated Appropriations Act), the constitutional separation of powers, and the constitutional Appropriations Clause.[38] Additionally, failure to spend could be a violation of the ICA.[39] These unlawful actions could be challenged in court under the APA.[40]

Considerations for Future Litigation Challenging Actions by a Hostile Administration

Ripeness/mootness

Under the IRA, most funds were appropriated in fiscal year 2022 and are to remain available through fiscal year 2030 (i.e., until September 30, 2031). It is likely that an agency planning to withhold funds would take some justiciable final action before the date of availability passes, such as termination of a program, or executive action to indicate impoundment.[41] In such cases, litigation challenging the withholding could

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[35] OFFICE OF MANAGEMENT AND BUDGET—WITHHOLDING OF UKRAINE SECURITY ASSISTANCE, B-331564 (Jan. 16, 2020), https://www.gao.gov/assets/b-331564.pdf.

[36] *Agenda47: Using Impoundment to Cut Waste, Stop Inflation, and Crush the Deep State*, DONALDJTRUMP.COM (June 20, 2023), https://www.donaldjtrump.com/agenda47/agenda47-using-impoundment-to-cut-waste-stop-inflation-and-crush-the-deep-state.

[37] *See National Coun. of Com. Mental H. Ctrs. v. Weinberger*, 361 F. Supp. 897 (D.D.C. 1973); *State of Louisiana v. Weinberger*, 369 F. Supp. 856 (E.D. La. 1973). More on the ICA's history can be found here: Michael Angeloni et al., *The Impoundment Threat, Explained*, PROTECT DEMOCRACY (June 13, 2024), https://protectdemocracy.org/work/impoundment-threat-explained/.

[38] *Id.*

[39] *See Guadamuz v. Ash,* 368 F. Supp. 1233 (D.D.C. 1973); *Loc. 2677, Am. Fed'n of Gov't Emp. v. Phillips*, 358 F. Supp. 60 (D.D.C. 1973).

[40] *City of New York v. Ruckelshaus*, 358 F. Supp. 669, 673 (D.D.C. 1973); *Washington v. Trump*, 441 F. Supp. 3d 1101, 1118 (W.D. Wash. 2020); *City & Cnty. of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020). It is also possible that these claims could be brought independent from the APA as an ultra vires action, but this would raise complications like the doctrine of sovereign immunity protecting the government from a lawsuit. *See Sierra Club v. Trump,* 929 F.3d 670, 698 (9th Cir. 2019) (accepts both APA and ultra vires claim); *Ctr. for Biological Diversity v. Trump,* 453 F. Supp. 3d 11, 46 (D.D.C. 2020) (ultra vires claim accepted in the alternative to APA claim). Additionally, courts occasionally order a writ of mandamus against an agency under constitutional principles. These constitutional orders are often granted in addition to an APA claim (*see City of New York v. Ruckelshaus*, 358 F. Supp. 669 (D.D.C. 1973); *State of Minn. by Likins v. Weinberger*, 359 F. Supp. 789, 791 (D. Minn. 1973); *Sioux Val. Empire Elec. Ass'n, Inc. v. Butz*, 367 F. Supp. 686 (D.S.D. 1973), *aff'd*, 504 F.2d 168 (8th Cir. 1974)), but at times courts have issued constitutional writs of mandamus against agencies with no mention of the APA. (*See In re Aiken Cnty.*, 725 F.3d 255 (D.C. Cir. 2013).

[41] For example, OMB issued apportionment schedules with footnotes that made al unobligated balances unavailable for obligation when Trump unlawfully impounded appropriations for Ukraine aid. Office of Management and Budget—Withholding of Ukraine Security Assistance, B-331564 (Jan. 16, 2020), https://www.gao.gov/assets/b-331564.pdf.

be brought at the time of final agency action. However, if there is no agency action, parties will have to wait to bring suit until the statutory deadline (i.e., the date of availability of funds) for their case to become ripe.[42] Another wrinkle is that the case will be moot if appropriations have lapsed, and a lapse occurs after the period of availability or if funds have been awarded elsewhere.[43] This means that, for withholding of funds, parties will have to bring suit seeking a preliminary injunction preventing lapse on the day of the lapse. For reprogramming or transfer, parties must seek a preliminary injunction to prevent the agency from awarding the funds when the agency announces its intent to reprogram.[44]

Standing

A number of different parties may suffer injuries from the reprogramming, transfer, or failure to spend funds allocated to climate-related programs under the IRA. For example: (1) entities eligible for funding under the relevant program may be able to bring suit based on loss of opportunity to be awarded those funds,[45] (2) parties who will suffer from localized impacts due to lack of funding may be able to sue based on environmental, recreational, or economic impacts,[46] (3) if funds are spent elsewhere, parties may be able to sue based the impacts of the project that does receive the funds,[47] and (4) it is also possible that Congress itself could sue over an agency failure to spend or unlawful reprogramming.[48] States will often be well positioned to bring suit as states receive special solicitude in the standing analysis,[49] and it is likely easier to find an injury absent identified grant awardees because most programs will benefit the state that houses them either economically or environmentally. It should be noted, however, that courts disagree as to whether a loss of tax revenue due to canceled projects establishes state standing.[50]

Under the APA, a plaintiff must satisfy the zone of interests test, which asks whether the injury suffered by the plaintiff falls within the intended protective scope of the statute at issue (in this case the IRA and/or

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[42] *See Gordon v. Norton, 322 F.3d 1213, 1220* (10th Cir. 2003).

[43] *See Cnty. of Suffolk, N.Y. v. Sebelius*, 605 F.3d 135, 141 (2d Cir. 2010); *City of Houston, Tex. v. Dep't of Hous. & Urb. Dev.*, 24 F.3d 1421, 1427 (D.C. Cir. 1994).

[44] *City of Houston, Tex. v. Dep't of Hous. & Urb. Dev.*, 24 F.3d 1421, 1427 (D.C. Cir. 1994).

[45] *See, e.g.*, *Price v. State of Hawaii*, 764 F.2d 623, 630 (9th Cir. 1985); *CC Distributors, Inc. v. United States*, 883 F.2d 146, 150 (D.C. Cir. 1989); *W. Virginia Ass'n of Cmty. Health Centers, Inc. v. Heckler*, 734 F.2d 1570, 1576 (D.C. Cir. 1984); *Nat'l Ass'n of Neighborhood Health Centers v. Mathews*, 551 F.2d 321, 329 (D.C. Cir. 1976); *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018) .

[46] *See California Sea Urchin Commission v. Bean*, 883 F.3d 1173, 1181-1182 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 411, 202 L. Ed. 2d 313 (2018); *City of New Haven, Connecticut v. United States*, 634 F. Supp. 1449, 1451 (D.D.C. 1986), *aff'd sub nom. City of New Haven, Conn. v. United States*, 809 F.2d 900 (D.C. Cir. 1987).

[47] See Border Wall cases.

[48] *United States House of Representatives v. Mnuchin*, 976 F.3d 1, 13 (D.C. Cir. 2020), *cert. granted, judgment vacated sub nom. Yellen v. United States House of Representatives*, 142 S. Ct. 332 (2021).

[49] *Massachusetts v. EPA*, 549 U.S. 497, 520, 127 S.Ct. 1438 (2007).

[50] *Compare El Paso Cnty., Texas v. Trump*, 982 F.3d 332, 340 (5th Cir. 2020) *with Sierra Club v. Trump*, 929 F.3d 670, 704 (9th Cir. 2019).

the relevant appropriations act).[51] The zone of interests test is a provision-based analysis and is generally understood to be quite lenient.[52] But appropriations disputes are unique in that the interest being asserted may be marginal to the relevant appropriations statute, particularly if the appropriations statute does not include substantive policy.[53] The IRA does include substantive policy, so in theory this should not pose an obstacle as long as the injury claimed is related to the provision under which the funds were granted. For example, if funds are withheld from a drought prevention program, the state will suffer economically from future droughts or individuals who fish recreationally will suffer damages to their recreational interest.

There is some uncertainty surrounding the zone of interests in the appropriations context. In the Trump Border Wall cases, which challenged unlawful transfer of appropriated funds, a number of lower courts did not see the zone of interests test as an obstacle and found standing for a variety of plaintiffs,[54] but other lower courts disagreed.[55] The Supreme Court stayed the Border Wall cases without a full judgement, citing no cause of action without explanation.[56] Standing was, therefore, not expressly addressed by the court.

Deference

Although agency decisions have a history of receiving deference when challenged in court, future spending decisions will likely be reviewed de novo and therefore be easier to contest. One reason for this is that, in *Loper Bright Enterprises v. Raimondo*, the Supreme Court overruled a mainstay of administrative law, Chevron deference.[57] Under the Chevron doctrine, courts deferred to reasonable agency interpretations of ambiguous statutes. In theory, this includes the interpretation of ambiguous statutory terms found in authorizing and/or appropriating statutes, but courts rarely applied Chevron deference to agency spending decisions. This fact, together with the overturning of Chevron in *Loper Bright*, makes it extremely unlikely that parties who bring suit to challenge agency attempts to claw back, reprogram, or withhold funds will have to overcome deference.

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[51] This can also be framed as an APA cause of action issue.

[52] *CSL Plasma Inc. v. U.S. Customs & Border Prot.*, 33 F.4th 584, 589 (D.C. Cir. 2022).

[53] Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075, 1122 (2021).

[54] *Sierra Club v. Trump*, 963 F.3d 874, 894 (9th Cir. 2020), *vacated and remanded sub nom. Biden v. Sierra Club*, 142 S. Ct. 46, 210 L. Ed. 2d 985 (2021); *United States House of Representatives v. Mnuchin*, 976 F.3d 1, 13 (D.C. Cir. 2020), *cert. granted, judgment vacated sub nom. Yellen v. United States House of Representatives*, 142 S. Ct. 332, 211 L. Ed. 2d 175 (2021); *El Paso Cnty. v. Trump*, 408 F. Supp. 3d 840, 851 (W.D. Tex. 2019).

[54] *Washington v. Trump*, 441 F. Supp. 3d 1101, 1118 (W.D. Wash. 2020).

[55] *See Ctr. for Biological Diversity v. Trump,* 453 F. Supp. 3d 11, 42 (D.D.C. 2020); *El Paso Cnty., Texas v. Trump,* 982 F.3d 332, 342 (5th Cir. 2020).

[56] *Trump v. Sierra Club*, 140 S. Ct. 1, (2019).

[57] *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

IRA TAX PROGRAMS

Alongside its direct spending programs, the IRA contains extensive revisions to the tax code to support a variety of climate-related programs. These provisions are generally less vulnerable to direct executive interference than its spending provisions. This resilience can be attributed to two factors. First and foremost, the IRA's tax credit provisions are generally "self-executing," meaning that they immediately change the law without requiring an additional layer of regulation. Second and relatedly, the IRA's tax credit provisions are significantly more detailed than its spending provisions, and delegate much less discretion to executive agencies.

While regulations are often not required to operationalize the tax credit provisions in the IRA, they can provide useful clarity to taxpayers looking to claim those credits. Thus, to support implementation of the IRA, the Internal Revenue Service ("IRS") has issued, or is the process of developing, guidance and regulations to clarify key definitions, update administrative and accounting procedures, and otherwise make it easier for taxpayers to claim the credits made available via the IRA. Specifically, IRS has issued or proposed guidance and regulations relating to 26 different elements of the IRA.[58] Recently concluded and currently active regulatory proceedings are listed in Table 2. As discussed at greater length below, several of these programs are vulnerable to repeal or reversal.

Table 2: Recently Concluded and Open Tax Regulations

Recently Concluded Rulemakings	Open Rulemakings
New Clean Vehicle Credits	Clean Hydrogen Production Tax Credits
Elective Payment of 12 IRA Credits	Advanced Manufacturing Production Tax Credits
Elective Payment of Advanced Manufacturing Production Tax Credits	Investment Tax Credit for Energy Property
Transfer of Tax Credits under 11 IRA programs	Clean Energy Production Credit
Prevailing Wage & Apprenticeship Standards	Clean Energy Investment Credit

Risks to IRA Tax Programs

Despite the relative stability of the IRA's tax programs, a future Presidential administration could undermine these programs in at least three ways. Actions that could be taken include: (1) changing or challenging tax regulations, (2) withdrawing active rulemakings designed to provide clarity and certainty to

[58] *See IRA-Related Tax Guidance*, U.S. TREASURY DEPT. (Jul. 25, 2024), https://home.treasury.gov/policy-issues/inflation-reduction-act/ira-related-tax-guidance.

taxpayers, and (3) indirectly sabotaging climate investments by injecting uncertainty into IRS regulatory and enforcement processes.

Changes and Challenges to Existing Tax Regulations

A new administration could change the regulations and guidance issued by the IRS in support of the IRA. However, unwinding formal regulations is a slow process, and there are many opportunities for opponents to challenge a regulatory reversal. As an example, when President Trump first entered office in 2017, he directed the new Secretary of the Treasury to review all tax programs and identify regulations to target for repeal and reversal.[59] The Treasury Department duly complied, but was required to go through multiple lengthy rulemaking processes, including public comment processes.[60] For instance, one of the proposals suggested revoking a set of regulations governing the minimum documentation that taxpayers must provide to establish whether their interest in a corporation should be treated as "stock or indebtedness."[61] Treasury announced its intent to revoke these regulations on August 14, 2017.[62] In response to this proposal, "Treasury and IRS received approximately 40 comment letters submitted by professional and trade associations, private businesses, public interest groups, and trade unions, as well as over 68,500 comments submitted by individual taxpayers."[63] IRS responded to these comments in a Notice of Proposed Rulemaking published on September 24, 2018, again proposing to remove the documentation regulations despite significant public opposition.[64] IRS received only 3 written comments on this proposal, and issued a final regulation removing the documentation requirements on November 4, 2019.[65] This timeline, which required IRS to undertake nearly two and a half years of deliberation and review nearly 70,000 comments, illustrates the difficulty of repealing even relatively simple tax regulations. However, as discussed below, even threatened regulatory change can jeopardize the goal of tax credit programs by creating legal uncertainty.

Some recently enacted regulations may separately be vulnerable to immediate reversal under the Congressional Review Act ("CRA"). The CRA allows Congress to review major federal agency rules before they take effect.[66] If Congress passes a joint resolution disapproving of a rule within 60 session days after it is finalized, and that resolution is signed by the President, the rule will have no force or effect and the relevant federal agency will be prevented from adopting any substantially similar rule in the future. The CRA means that regulations finalized later in 2024 (i.e., within the last 60 legislative days of the 2024

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[59] Executive Orders 13771 (Feb. 3, 2017), 13777 (Feb. 24, 2017), and 13789 (Apr. 21, 2017).

[60] *See* Executive Order 13789-Second Report to the President on Identifying and Reducing Tax Regulatory Burdens, 82 Fed. Reg. 48013 (Oct. 17, 2017) (describing this process).

[61] *See* Proposed Removal of Section 385 Documentation Regulations, 83 Fed. Reg. 48265 (Sept. 24, 2018).

[62] *See* One-Year Delay in the Application of § 1.385-2, IRS Not. 2017-36 (Aug. 14, 2017).

[63] Proposed Removal of Section 385 Documentation Regulations, 83 Fed. Reg. 48265, 48266 (Sept. 24, 2018).

[64] *See id.*

[65] *See* Removal of Section 385 Documentation Regulations, 84 Fed. Reg. 59297 (Nov. 4, 2019).

[66] 5 U.S.C. § 801 et seq.

session) could be rejected by the newly elected 119th Congress when it opens session in 2025. This exact cut-off date will not be known until Congress adjourns for 2024. However, it is likely that regulations finalized in or after May 2024 may be vulnerable to reversal by the next Congress.[67]

The IRS recently finalized two significant IRA-related regulations that may be vulnerable to reversal under the CRA. These regulations include:

1. Regulations governing Clean Vehicle Tax Credits, that clarify which vehicles are eligible for tax credits, and allow taxpayers to receive an immediate discount when they buy an electric vehicle by transferring their credits to the dealership.[68]
2. Regulations governing Prevailing Wage and Apprenticeship programs, which provide bonus tax credits to a range of climate projects that pay competitive wages and support career development through apprenticeship programs.[69]

Tax regulations may also be subject to a range of legal challenges under new standards of review following the Supreme Court's decision in *Loper Bright*. As noted above, in *Loper Bright*, the Supreme Court overturned the principle of Chevron deference and, and declared that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[70] Thus, courts must "independently interpret the statute" at issue and find its "single, best meaning," rather than deferring to reasonable agency interpretations.[71] In considering the implications of this shift for litigation involving IRA-related tax regulations, it is worth noting that the Department of Treasury and IRS generally tend to interpret their authority to make tax regulations conservatively, and rarely make expansive changes without express Congressional direction.[72] The regulatory actions IRS is taking to aid implementation of the tax credit provisions in the IRA are consistent with this longstanding approach. Also notable is the fact that the tax credit provisions in the IRA are highly detailed and leave little discretion to the IRS. While it is still unclear how courts will proceed following *Loper Bright*, several of the possible non-deferential standards that they may turn to still give some "weight and persuasiveness" to agency interpretations—especially those issued soon after a new law was enacted.[73] Given this context, recent

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[67] *See* Kevin Bogardus, *Murky Deadline Looms for Biden's Regs*, E&E NEWS (Mar. 21, 2024), https://www.eenews.net/articles/murky-deadline-looms-for-bidens-regs/.

[68] Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, 89 Fed. Reg. 37706 (May 6, 2024).

[69] Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements, 89 Fed. Reg. 53184 (June 25, 2024).

[70] *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

[71] *Id.*

[72] *See* Tim Shaw, *Tax Pros Discuss Impact of Loper Bright on IRS Regs*, THOMSON REUTERS (July 29, 2024), https://tax.thomsonreuters.com/news/tax-pros-discuss-impact-of-loper-bright-on-irs-regs/.

[73] *See id.*; *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) ("We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance."); *Nat'l Muffler Dealers Ass'n, Inc.*

regulations that implement the IRA tax credit provisions may be less vulnerable to challenges than those issued in other contexts.

Disruption of Active Rulemakings

At the time of writing, the IRS was in the process of developing at least four sets of regulations related to IRA tax credit programs. The proposed regulations supplement, revise, or provide clarity around:

1. The Clean Energy Production Credit and Clean Energy Investment Credit, including (among other changes) standards to determine how greenhouse gas emissions rates from an energy facility should be calculated;[74]
2. Various definitions related to the Investment Tax Credit for Energy Property, which clarify which properties qualify for the credit and how credits should be calculated;[75]
3. The Clean Hydrogen Production Credit, including (among other changes) standards to determine the lifecycle greenhouse gas emissions from clean hydrogen production facilities;[76] and
4. The Advanced Manufacturing Production Credit, including definitions that clarify which products are eligible for the credit.[77]

Some of these proposed regulations may be finalized before President Biden leaves office. If that does not happen, the next administration could order the IRS to halt work on any pending regulations. This would generally not impact the availability of the tax credits themselves—taxpayers could still take advantage of them—but would be highly disruptive and could result in significant uncertainty for taxpayers. When the IRS fails to exercise delegated regulatory authority or fails to clarify the administrative processes that allow a taxpayer to demonstrate eligibility for a credit, taxpayers may be forced to rely on courts to fill these gaps.[78] As explained below, the uncertainty introduced by IRS inaction could discourage the type of private-sector investment the IRA tax credit programs were intended to spur.

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v. United States, 440 U.S. 472, 477 (1979) ("A[n IRS] regulation may have particular force if it is a substantially contemporaneous construction of the statute by those presumed to have been aware of congressional intent.").

[74] Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, 89 Fed. Reg. 47792 (June 3, 2024).

[75] Definition of Energy Property and Rules Applicable to Energy Credit, 88 Fed. Reg. 82188 (Nov. 22, 2024).

[76] Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property, 88 Fed. Reg. 89220 (Dec. 26, 2023).

[77] Section 45X Advanced Manufacturing Production Credit, 88 Fed. Reg. 86844 (Dec. 15, 2023).

[78] The rules produced by courts in the absence of IRS guidance have been referred to as "phantom regulations." *See generally* Frank G. Colella, *Pinch-Hitting for the IRS: Second Circuit Adopts Phantom Regulations to Curb a Monster Abuse of Financial Derivatives*, 4 BUS. ENTREPRENEURSHIP & TAX L. REV. 26 (2020); Amandeep S. Grewal*, Substance over Form? Phantom Regulations and the Internal Revenue Code*, 7 HOUS. BUS. & TAX L. J. 42 (2006); *see also* Sheldon D. Pollack, *Tax Reform: The 1980's in Perspective*, 46 TAX L. REV. 489, 528 (1991) (discussing the challenges posed by gaps or delay in tax regulation).

The High Cost of Uncertainty

While our analysis indicates that the IRA's tax programs are less vulnerable to unilateral reversal by executive action, a hostile administration could still wreak havoc by injecting uncertainty into the tax system. Tax credits, for the most part, are delayed benefits—taxpayers must spend money upfront before they can claim deductions or rebates. This means that a taxpayer who spends money today expecting a tax credit tomorrow is assuming the risk that those credits might evaporate. Moreover, the IRA's tax credits are designed to encourage enormous investments in infrastructure projects—e.g., battery factories, solar power plants, electric vehicle fleets—and any actions that make tax credits more unpredictable could dramatically increase the risk (and cost) for private investors in those projects.

Threatened changes to the tax code can discourage long-term investment today, even if those changes never come to pass.[79] Even without changing the tax code itself, a new administration could introduce uncertainty by directing the IRS to review its enforcement policies or interpretations of the existing code.[80] The cost of this uncertainty is "hard to calculate, in part because these costs are realized in projects *not* built."[81]

OTHER IRA CLIMATE PROVISIONS

The IRA requires changes to federal land leasing programs administered by the Bureau of Land Management ("BLM") and Bureau of Ocean Energy Management ("BOEM"). Among other things, the IRA specifies a higher minimum royalty rate for oil and gas leases on federal lands[82] and prevents the leasing of land for renewable energy development, unless a specified amount of land has previously been offered for lease for oil and gas development.[83] These changes have been fully implemented by BLM and BOEM. In many cases, the changes could be implemented without updating agency regulations, and thus there was no formal notice-and-comment rulemaking process. Where rulemaking did occur, it involved only minor regulatory updates to conform to the legislation, and there was no exercise of agency discretion. All of the rulemakings were completed prior to May 2024 and thus are at low risk of disallowance under the CRA. Moreover, since the changes were mandated by the IRA, they could not be unilaterally undone by a future administration (i.e., absent additional Congressional action).

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[79] *See* Louis Kaplow, *An Economic Analysis of Legal Transitions*, 99 HARV. L. REV. 509, 613–14 (1986).

[80] *See* Sarah B. Lawsky, *Probably? Understanding Tax Law's Uncertainty*, 157 U. PA. L. REV. 1017 (2009).

[81] Martin Lockman, *Climate Entrenchment in Unstable Legal Regimes*, 118 NW. U.L. REV. ONLINE 98, 107 (2023).

[82] Inflation Reduction Act, §§ 50261, 50262.

[83] *Id*. § 50265.

The IRA also directs the EPA to update certain regulations implementing the Greenhouse Gas Reporting Program ("GHGRP").[84] The relevant regulations were finalized in early May 2024[85] and thus could, depending on when Congress's 2024 session ends, potentially be subject to disapproval under the CRA. It is also possible that a future administration might look to revise the regulations, but this would require it to undertake a new notice-and-comment rulemaking process. As noted above, this could be a lengthy process, and there would be opportunities to challenge the administration's action through administrative and court proceedings.

EPA is also required, under the IRA, to collect a fee (known as the "waste emissions charge" or "WEC") from certain oil and gas producers for each ton of methane they emit above set thresholds.[86] EPA published a proposed rule to implement the WEC in January 2024 but has yet to complete the rulemaking process.[87] Any final rule published before President Biden leaves office would be at risk of disapproval under the CRA, and revision by a future administration, though the latter would require EPA to undertake a new notice-and-comment rulemaking. If the initial rulemaking is not completed during President Biden's term, a future administration could delay finalizing the regulations, which could introduce significant uncertainty and potentially delay implementation of the WEC program.

CONCLUSION

The IRA represents a historic investment in climate action and is already delivering significant benefits to communities across the United States. In the two years since enactment of the IRA, federal agencies have awarded more than $40.7 billion under the IRA's non-loan grant programs, and an additional $10 billion has been allocated to internal agency spending, enabling various actions to reduce greenhouse gas emissions and protect against the impacts of climate change. Federal agencies have announced plans to award additional funds in coming months. As such, a significant portion of the funds available under the IRA's non-loan grant programs may be committed before President Biden leaves office. It is likely to be difficult for a future administration to claw back funds already committed. While a future administration may have greater ability to reallocate or withhold uncommitted funds, there are some important limitations that would constrain what it can do. Unlawful administrative actions could be challenged in the court but complex issues relating to standing, ripeness, and mootness would need to be navigated.

Opportunities for interference with the various tax credit programs established and expanded via the IRA are, likewise, fairly limited. However, any administration action that creates uncertainty could discourage private sector investment, and thus limit the IRA's effectiveness in driving private action on climate

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[84] *Id*. § 60113.

[85] Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, 89 Fed. Reg. 42062 (May 14, 2024).

[86] Inflation Reduction Act, § 60113.

[87] Waste Emissions Charge for Petroleum and Natural Gas Systems, 89 Fed. Reg. 5318 (Jan. 26, 2024).

change. A hostile administration could also introduce uncertainty with respect to the implementation of the WEC established via the IRA and other key climate-related provisions of the Act.

It is clear then, that work to implement the IRA is far from over, and the Act's success in driving action on climate change will depend heavily on the outcome of the 2024 election.