

Inflation Reduction Act

Rich Gold, Beth Viola, Nicole Elliott & Josh Odintz

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Holland & Knight

Housekeeping Items

- Webinar is being recorded and will be posted on our website
- Please share questions via the Q&A box on your screens. We may not have time for questions today as we have a lot of ground to cover, but our speakers will be following up after the program to answer your questions.

Now on to our presentation.

Today's Speakers



Rich Gold

Partner



Beth Viola

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Nicole Elliott

Partner



Josh Odintz

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Agenda

I. General Overview

II. Direct Funding Programs

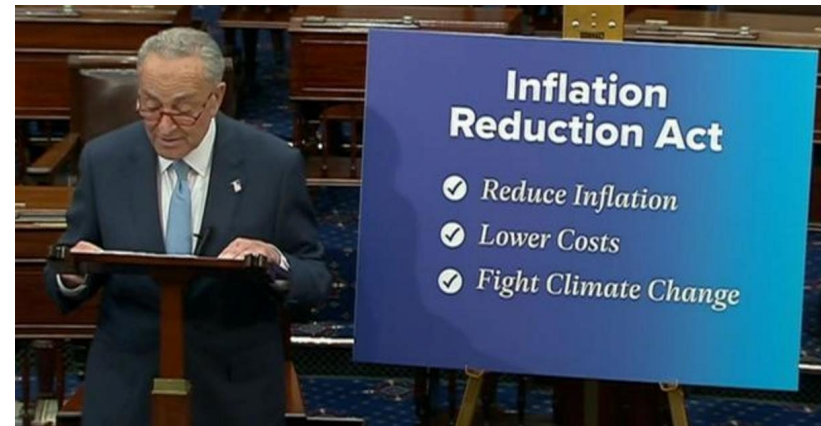
III. New Taxes and Tax Incentives

IV. What to Expect Next

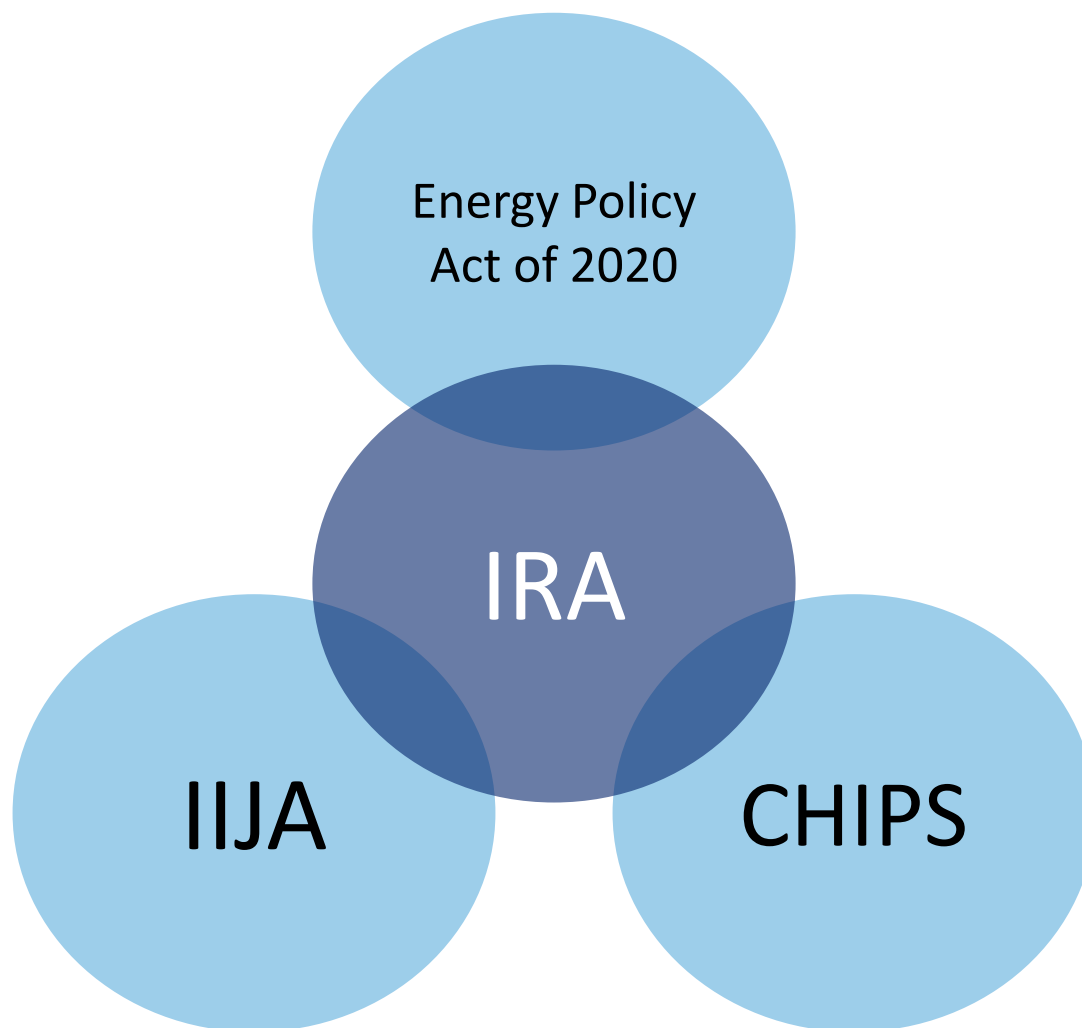
IRA: Climate & Energy

Why the IRA matters:

- Unprecedented amounts of money
- Fundamentally revises the tax code to greater incentivize carbon reductions
- Provides a significant runway to allow investments to transition to a low carbon economy
- Ensures disadvantaged communities are not left behind
- JOBS JOBS JOBS
- Onshoring supply chain
- Reducing emissions



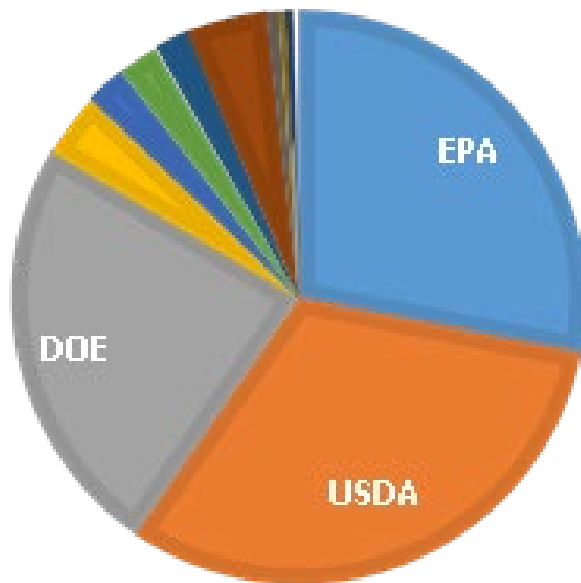
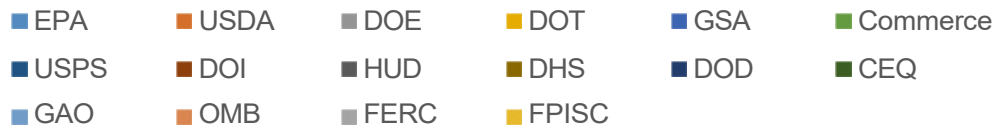
IRA & Other Packages:



Direct Funding Programs

\$147.81 Billion in Direct Funding

DIRECT APPROPRIATIONS TO FEDERAL AGENCIES



Agency	Total Appropriation
USDA	\$46.684 billion
EPA	\$41.491 billion
DOE	\$35.292 billion
DOI	\$6.646 billion
DOT	\$5.442 billion
GSA	\$3.375 billion
DOC	\$3.310 billion
USPS	\$3.015 billion
HUD	\$1 billion
DHS	\$500 million
DoD	\$500 million
FPISC	\$350 million
FERC	\$100 million
CEQ	\$62.5 million
GAO	\$25 million
OMB	\$25 million
TOTAL	\$147.817 billion

Climate Energy & Environment Investments



EPA - methane emissions, GHG Fund, GHG definition and environmental justice



DOE - Manufacturing, industrial emissions, building efficiency, loan programs



DOI - Investments in conventional energy development, increased royalties, drought & fire preparedness and response



DoD - Defense Production Act



USDA - Conservation programs, wildlife prevention, carbon sequestration & support for rural electric cooperatives

Tax Revenue Raiser - New Corporate Alternative Minimum Tax

- Applies to “applicable corporations”
 - Start with applicable financial statement (AFS)
 - A corporation is an “applicable corporation” if applicable financial statement income (AFSI) is greater than **\$1 billion** (average over 3 year period)
 - For a foreign-headquartered group, U.S. group(s) must also have greater than **\$100 million** of AFSI from U.S. activities to be considered an “applicable corporation”
- AFSI is computed by starting with AFS, with statutory adjustments and others adjustments provided by future Treasury guidance
 - Include share of CFC income (without QBAI)
 - Reduce AFSI due to accelerated depreciation
 - Include distributive share from partnerships (to be defined by Treasury)
 - Adjust for certain pensions
 - No benefit for FDII

New Corporate Alternative Min. Tax

- Additional key features of the new tax
 - Foreign tax credits paid by a CFC can be fully cross credited, with a limit of 15% of CFC income
 - Foreign taxes paid by U.S. corporation or by a foreign branch of a U.S. corporation not subject to limit
 - Can offset up to 75% of AMT liability with general business credits
 - Can offset up to 80% of AFSI with **post-2019** net operating losses (pre-2020 NOLs are permanently lost)

Tax Revenue Raiser - Excise Tax on Repurchase of Corporate Stock

- One percent excise tax on the net of stock repurchased by a “covered corporation” after December 31, 2022
- “Covered corporation” is a domestic corporation whose stock is traded on an established securities market
- Excise tax applies on the net fair market value of repurchases over issuances
- Repurchase is defined as a redemption and any other transaction Treasury defines as economically similar
- Special rules for:
 - Corporations that invert after September 20, 2021
 - Corporate reorganizations

Tax Credits For Businesses

1. Energy Generation

- Production Tax Credit - Section 45 ↓
- *NEW* Clean Electricity Production Credit - Section 45Y
- Investment Tax Credit - Section 48 ↓
- *NEW* Clean Electricity Investment Credit - Section 48E
- *NEW* Zero-Emission Nuclear Power Production Credit - Section 45U

2. Clean Fuels

- Extension of existing credits
- *NEW Clean Hydrogen - Section 45V*
- *NEW Sustainable Aviation Fuel - Section 40B*
- *NEW Clean Fuel Production Credit - Section 45Z*

Tax Credits For Businesses

3. Energy Manufacturing

- Advanced Energy Project Credit - Section 48C
- *NEW* Advanced Manufacturing Production Credit - Section 45X
- *NEW* Advanced Manufacturing Investment Credit - Section 48D*

4. Clean Vehicles

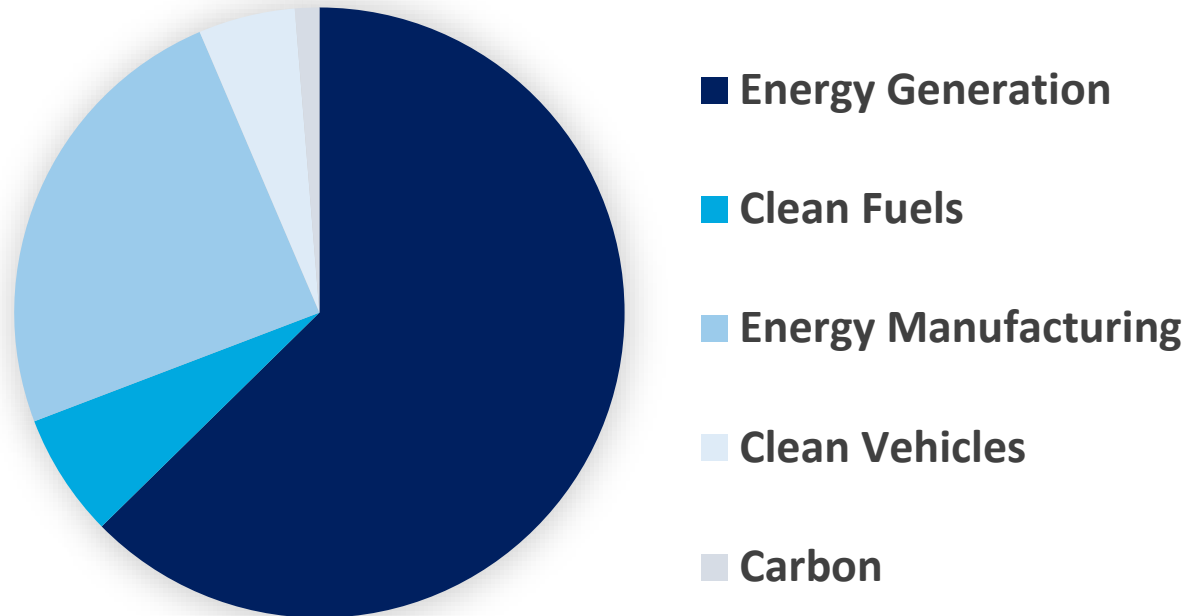
- Alternative Fuel Vehicle Refueling Property - Section 30C
- Clean Vehicle Credit - Section 30D
- *NEW* Qualified Commercial Vehicles - Section 45W

5. Carbon Sequestration

- Credit for Carbon Oxide Sequestration - Section 45Q

Tax Credit Observations

Funding Distribution



- Lot of new credits
- Long runway on effective dates
- Transition to technology neutral
- Focus on U.S.A.

Themes

**Credit
Monetization**

**Prevailing
Wage and
Apprenticeship**

**Domestic
Content**

**Energy
Communities
/ Low Income
Communities**

Monetization

Credits can be directly paid....

- Only available for applicable entities: tax exempt entities, a state or political subdivision, Tennessee Valley Authority or Native American tribe can elect for direct payment of most of IRA energy credits.
- Direct pay not limited to applicable entities for three IRA credits, and in such cases can be direct pay to a wide variety of taxpayers:

- Credit for Carbon Oxide Sequestration – Section 45Q
- *NEW* Advanced Manufacturing Production Credit - Section 45X
- *NEW* Credit for Production of Clean Hydrogen - Section 45V

- Entire section not effective until taxable years after 2022.

Monetization

Credits can be transferred...

- Transferor is limited in that it can't be a tax-exempt, political subdivision etc., but all other taxpayers can transfer.
- Transferee is limited in that it can't be a related party.
- Transfer can be any or all of credit and must be for cash.
- Transferor doesn't deduct payment, transferee does not pay tax on cash received.
- Entire section not effective until taxable years after 2022.

Prevailing Wage and Apprenticeship

- Bonus Credit – not mandatory, multiplier of 5
- Correction, good faith and penalty procedures available
- Exceptions for small project and those beginning construction prior to 60 days after guidance

Prevailing Wage

- Applies for laborers and mechanics employed by taxpayers and their contractor or subcontractors.
- Applies during construction and sometimes alteration or repair.
- Generally requires Davis-Bacon wages are paid.

Apprenticeship

- Labor Hours. Must look at total labor hours and meet percentage that has to be performed by qualified apprentices.
- Percentage starts at 10% → 15%.

Domestic Content

- Only relevant for some tax credits, not all
- Usually acts as a bonus, not a barrier
- Can impact direct pay election

Section 45 –PTC / Section 45Y – Tech Neutral PTC

- 10% bonus determined after bonus of prevailing wage and apprenticeship bonus is considered.

Section 48 – ITC / Section 48E – Tech Neutral ITC

- 2% bonus if prevailing wage and apprenticeship is not met
- 10% bonus if prevailing wage and apprenticeship is met

- Certification that steel, iron, or “manufactured products” which is a component of such facility was produced in the United States
 - For manufactured products consider cumulative cost and must hit applicable percentage, 40% (20% for offshore wind)

Specified Communities

Energy Communities

- Bonus credit for facilities located in energy communities
- Relevant for a few tax credits, not all
- Defined as a census tract in which a
 - coal mine was closed after 12/31/1999,
 - coal fired electric generation unite retired after 12/31/2009 OR
 - any directly adjoining tract described above

Section 45 –PTC / Section 45Y – Tech Neutral PTC
Section 48 – ITC / Section 48E – Tech Neutral ITC

Low Income Communities

- Bonus credit for solar and wind facilities serving low-income communities
- Relevant for a few tax credits, not all
- Must receive allocation of environmental justice capacity
- Defined as:
 - Low income community as defined in Section 45D or on Indian land
 - Is part of qualified low-income residential building project or a qualified low-income benefit project

Section 48 – ITC / Section 48E – Tech Neutral ITC

Other Business Tax Incentives

- Energy Efficient Commercial Buildings Deduction – Section 179D
 - Reduces barrier to qualify
 - Increases value
 - Energy efficient building property that qualifies for the deduction includes improvements to the building envelope, certain heating, ventilation and air conditioning systems and lighting systems
 - It applies to new construction and the retro-fitting of existing buildings
 - Tax-exempt entities can now benefit



What's Next?

Agency
Implementation

Thank You



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Rich Gold is the leader of the firm's Public Policy & Regulation Group and focuses his practice at the intersection of complex policy and political issues involving Congress, the executive branch and the media. The Public Policy & Regulation Group has been ranked among the top law and lobbying firms in Washington by publications including *American Lawyer's Influence Magazine*, *Legal 500 United States* guide, *Financial Times* and *U.S. News - Best Lawyers* guide. Mr. Gold has been recognized as a top lobbyist in Washington by *The Hill*, *The National Journal*, *Washington SmartCEO*, *Super Lawyers*, *Washingtonian* and *The Washington Business Journal*.

Mr. Gold served in the U.S. Senate for Sen. Lloyd Bentsen (D-Texas) as his advisor on environmental affairs where he worked on issues related to environmental side agreements of the North American Free Trade Agreement (NAFTA). During the Clinton administration, he was a special assistant to Environmental Protection Agency (EPA) Administrator Carol Browner, with whom he helped develop the EPA's Superfund reform proposal and its administrative improvements package. Mr. Gold also served as a career lawyer in the EPA's Office of Enforcement and Compliance Assurance and Office of General Counsel, working on major rulemakings as well as significant Superfund cases.

In recognition of Mr. Gold's energy and environmental policy expertise, he was appointed to the Board on Environmental Studies and Toxicology of the National Academy of Sciences in 2009 and served until 2012.



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Beth A. Viola is a senior policy advisor in Holland & Knight's Washington, D.C., office where she is among the leadership of the firm's Energy and Natural Resources Industry Sector Group. Possessing decades of experience in climate change and energy policy, Ms. Viola advises a range of corporate clients, coalitions and industry associations on public policy issues related to greenhouse gas (GHG) emissions reductions, renewable energy, environment, tax, trade, appropriations and public relations.

Ms. Viola has deep and longstanding connections with the environmental community and an impressive track record in building, managing and successfully advocating on behalf of coalitions essential to shaping legislation and regulation. Lobbying extensively before the White House, federal agencies and Congress, Ms. Viola brings together businesses and powerful third-party voices in the non-governmental organization (NGO) space to deliver policy solutions that benefit both businesses and the environment. She also provides strategic, policy and political advice to companies across the energy, transportation, industrial and agriculture sectors with an emphasis on both domestic and international climate policy.



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Nicole Elliott is a tax attorney in Holland & Knight's Public Policy & Regulation Group in Washington, D.C. Prior to joining Holland & Knight, Ms. Elliott was an executive with the U.S. Department of the Treasury and member of the senior executive team with the Internal Revenue Service (IRS).

At Holland & Knight, Ms. Elliott counsels clients on understanding and navigating the complexities of tax policy, and represents clients seeking legislative and regulatory changes to tax laws. Ms. Elliott's practice also involves advising clients in the context of tax controversies, both at the administrative level before the IRS and in litigation. Finally, Ms. Elliott has particular knowledge and experience in assisting tax-exempt organizations such as public charities and Native American governments.

While at the IRS, Ms. Elliott was the lead executive responsible for overseeing all aspects of the Affordable Care Act implementation. On numerous occasions, she was called upon to negotiate the more complex aspects of the healthcare law, not only within the IRS, but also as its key liaison with the executive branch and other government agencies. In addition, she was the IRS point of contact for Congress regarding the Affordable Care Act and frequently briefed Capitol Hill staff on the law and provided advice on legislative proposals.

Prior to her work with the IRS, Ms. Elliott was a tax litigator for the U.S. Department of Justice, Tax Division. Ms. Elliott handled both affirmative and defensive litigation in district and bankruptcy courts throughout the United States.



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Joshua D. Odintz is a tax attorney in Holland & Knight's Washington, D.C., office. Mr. Odintz focuses on tax policy, tax controversy and withholding tax matters. He also advises clients on domestic and international tax controversy matters at all phases, from audit and administrative appeals through litigation.

Mr. Odintz also has experience handling cases involving methods of accounting, transfer pricing, Section 199, research credit, tax accounting, privilege and work product, among others.

Mr. Odintz is a frequent speaker at the International Fiscal Association (IFA), Tax Executives Institute (TEI), American Bar Association (ABA), the University of Chicago Tax Conference and the D.C. Bar Association.

Prior to joining Holland & Knight, Mr. Odintz was a tax attorney at a multinational law firm's Washington, D.C., office, where he was on the management committee of the firm's North America tax practice.

In addition, Mr. Odintz has held high-level government positions with the U.S. Department of the Treasury and the Senate Committee on Finance. He previously served as a senior advisor for tax reform to the assistant secretary at the Treasury Department, where he advised senior treasury officials on tax reform options and issues. Mr. Odintz also served as the chief tax counsel to President Barack Obama's National Commission on Fiscal Responsibility and Reform and was instrumental in formulating the tax proposals in the commission's report. Additionally, Mr. Odintz served as the acting tax legislative counsel at the Treasury.