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BLOG

The Inflation Reduction Act Boosts EPA Funding to Enforce Climate-Related ESG Disclosure

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The Inflation Reduction Act of 2022

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (IRA). The IRA reconciliation package includes $369 billion in funding and subsidies to support the transition to renewable energy and reduce greenhouse gas emissions from the energy sector. While the IRA's clean energy investment and tax credit provisions have garnered much attention, one lesser-noticed provision relates to corporate greenhouse gas reporting and potential enforcement of climate-related environmental, social, and governance (ESG) disclosures. Section 60111 of the IRA provides $5 million for the EPA to improve standardization and transparency of corporate climate pledges. This funding boost means that even if the Securities & Exchange Commission trims its proposed climate-related disclosure rule for public companies in response to comments and objections, EPA may nevertheless enhance its review and enforcement of such pledges.

Section 60111 – Greenhouse Gas Corporate Reporting

The IRA reconciliation package advances the Biden Administration's "whole of government approach" to addressing climate change. Key features of the $369 billion in support and subsidies for renewable energy and reducing greenhouse gases include the following, among others:

- clean energy production tax credits;
- clean energy investment tax credits;
- clean fuel tax credits;
- a host of residential tax credits, including for energy efficiency home improvements, and residential soil, wind, geothermal, and biomass;
- electric vehicle tax credits for consumers;
- money for environmental and climate justice;
- a methane emissions reduction program; and
- incentives for "climate-smart" agricultural processes.

In addition to these financial provisions, the package includes a Greenhouse Gas Corporate Reporting section. In this section, the IRA appropriates $5 million to the EPA for fiscal year 2022 for the EPA to support:

1. Enhanced standardization and transparency of corporate climate action commitments and plans to reduce greenhouse gas emissions;
2. Enhanced transparency regarding progress toward meeting such commitments and implementing such plans; and
3. Progress toward meeting such commitments and implementing such plans.[1]

Departing from the normal one-year budget process typically used by Congress, these funds are to remain available until September 30, 2031. Through this provision, Congress gives EPA money and broad direction to review whether companies stay on track to meet announced corporate climate action commitments and plans.

Section 60111 Reflects Growing Third-Party Scrutiny of Climate-Related Claims

This provision in the IRA empowering EPA to further scrutinize corporate greenhouse gas emission targets and disclosures occurs at a time of growing third-party scrutiny of ESG disclosures.

As previously reported, activists, academics, and Congress are directing attention to climate-related and ESG claims. For instance, the United States House Committee on Oversight held a hearing to investigate corporate attempts to allegedly "greenwash" their operations and efforts to reduce greenhouse gas emissions. Climate advocacy entities published *The Corporate Climate Responsibility Monitor*, a report seeking to assess the transparency of large corporations' net-zero emissions pledges.[2] And private party lawsuits against companies making climate-related, sustainability, and other ESG claims appear to be increasing.

Relation to the Proposed SEC Disclosure Rule

Section 60111 of the IRA is another piece in the Biden Administration's whole of government approach to addressing climate change. It comes at the same time the Securities & Exchange Commission is considering whether to issue a proposed climate-related disclosure regime for public companies. The SEC disclosure rule is distinct from this provision of the IRA. It will remain to be seen how EPA's new direction and funding to scrutinize corporate greenhouse gas reporting and any future disclosure requirements EPA promulgates will fit with the proposed SEC disclosure rule and other EPA statutory authorities to conduct such reviews.

For further information or answers to questions on the IRA, ESG disclosures, and their implications, contact Jonathan D. Brightbill (partner, White Collar, Regulatory Defense, and Investigations, Environmental Litigation) or Madalyn Brown (associate, Environmental).

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[1] Section 60111 of H.R. 5376.

[2] New Climate Inst., *Corporate Climate Responsibility Monitor 2022* (Feb. 7, 2022), https://newclimate.org/2022/02/07/corporate-climate-responsibility-monitor-2022/.

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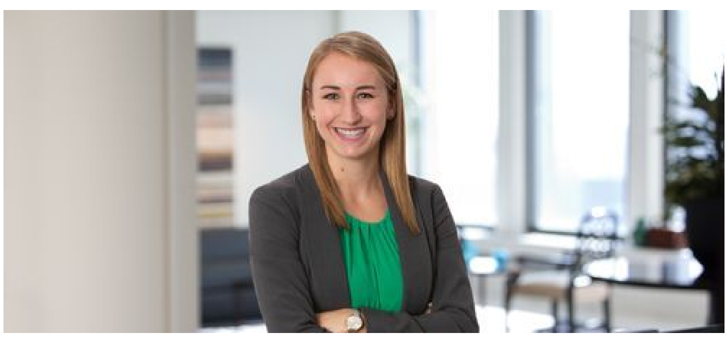

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