

# Webinar on the CHIPS Program and the Inflation Reduction Act

Columbia River Economic Development Council

March 22, 2023



# Today's Speakers



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Lisa Zarlenga is a partner in Steptoe's Tax Group and leads the tax policy practice. Drawing on her experience as Tax Legislative Counsel at the US Treasury Department, Lisa helps clients advocate for legislative changes and regulations and other administrative guidance to implement those changes. She also has significant experience structuring tax-free and taxable acquisitions and dispositions, joint ventures, and internal restructurings. Lisa has combined her policy and transactional backgrounds to help clients understand and structure transactions involving newly enacted provisions, including various energy tax credits.



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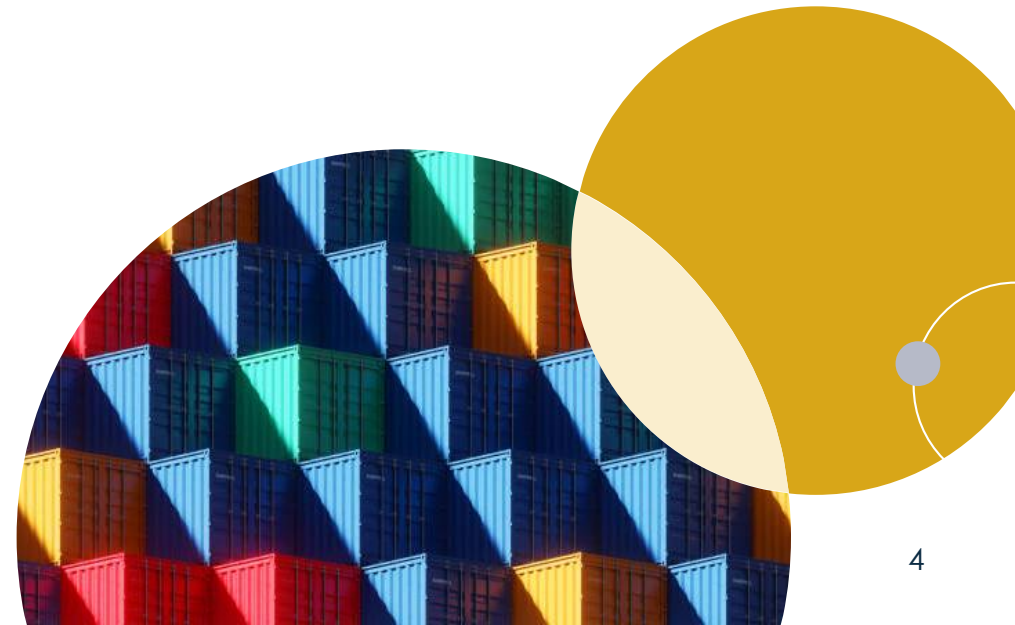
Jeff Weiss spent more than 15 years in senior legal, policy, diplomatic, negotiation, and political roles in the US government across three administrations – including at the White House, Office of the US Trade Representative (USTR), and the Office of the Secretary of Commerce – and now co-chairs Steptoe's internationally recognized International Trade Policy practice and leads the firm's [Supply Chain team](#).

# Agenda

- Setting the Scene
- Creating Helpful Incentives to Produce Semiconductors (CHIPS)
- Tech Hubs Program/Defense Production Act (DPA)
- Tax provisions from the Inflation Reduction Act (IRA) and CHIPS

# Setting the Scene

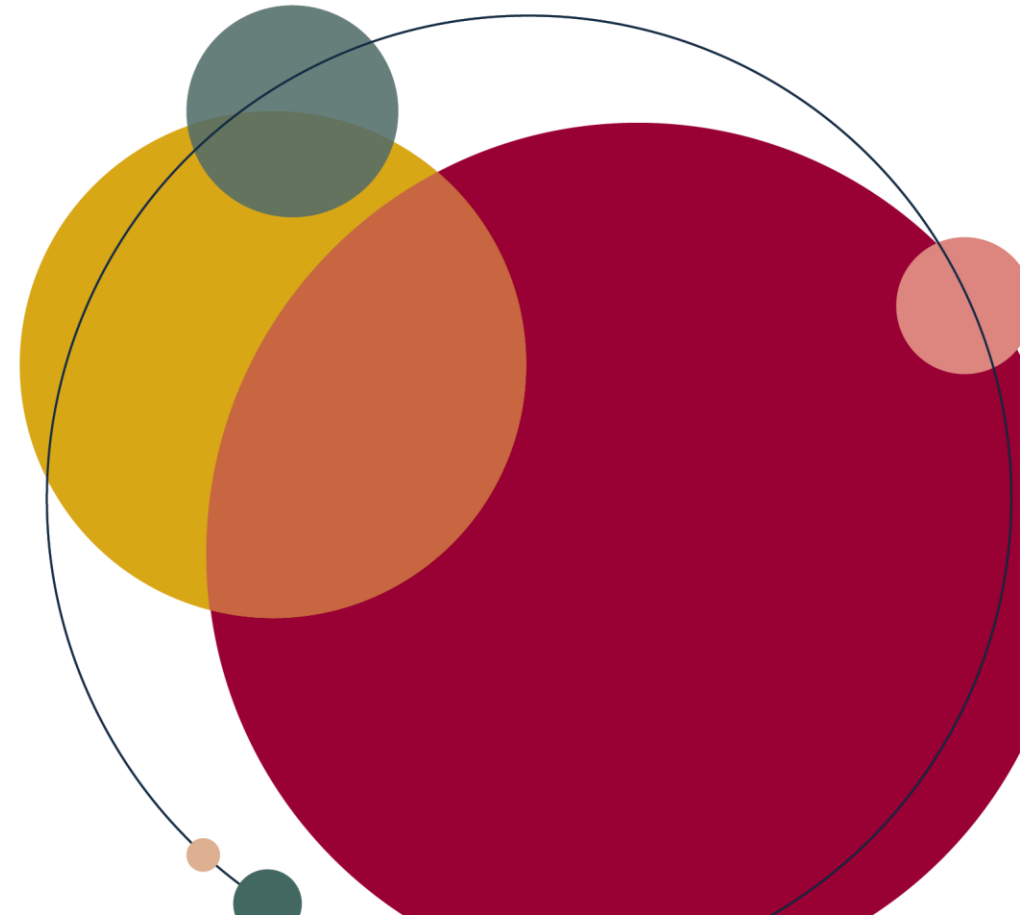
- US has pivoted towards industrial policy
- Spending, procurement, tax, trade policy, and ESG-related regulation are other tools in the toolbox
- Goal is to create resilient, sustainable, secure supply chains for key sectors
- China is the primary driver, de-coupling/de-risking is occurring in many areas
- We expect more of these measures to come



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# CHIPS Program Implementation

Jeff Weiss

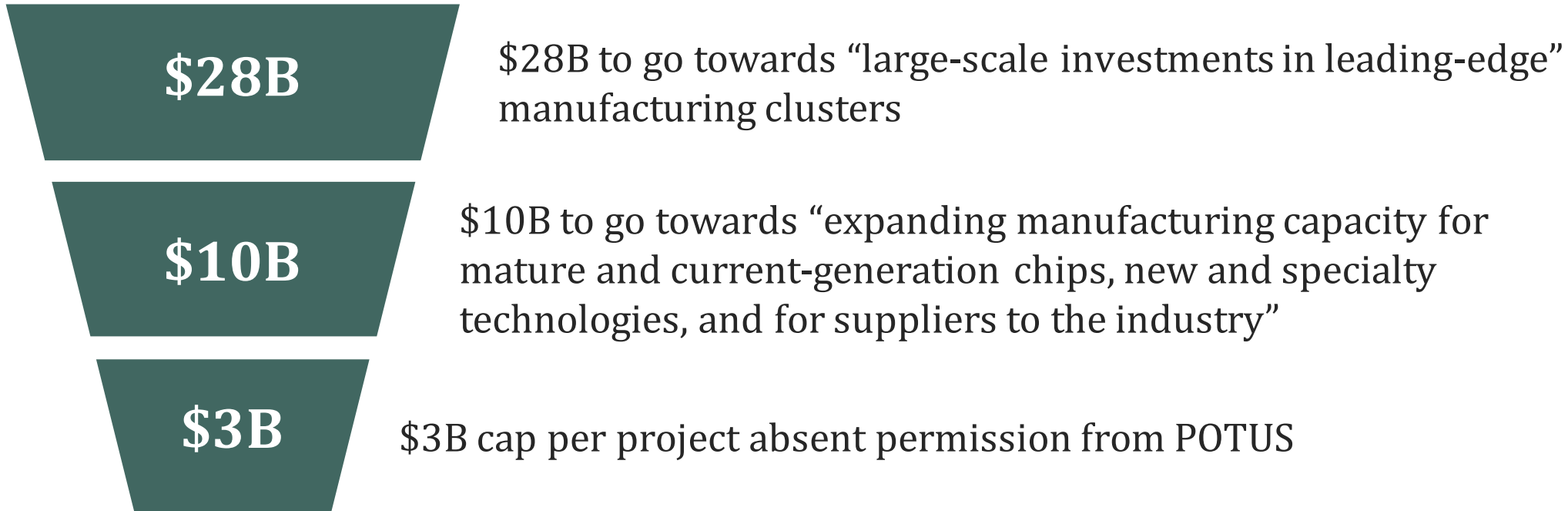


# CHIPS Legislation

## Goals:

Strengthening “the security and resilience of the semiconductor supply chain, including by mitigating gaps and vulnerabilities;” economic growth and job creation; bolstering skilled workforce; promoting inclusion

## Commerce expects:



# CHIPS Program Office (CPO) Incentives Program

- CPO, which is part of NIST, is implementing the CHIPS Incentives Program
- Awards will be issued on a rolling basis in the form of grants, cooperative agreements, loans/loan guarantees
  - There is no set maximum award amount under the CHIPS Act; awards greater than \$3B must be reported to Congress

## Application Process

1. Statement of Interest
2. Pre-Application (optional for leading-edge facilities; encouraged for current-generation, mature-node, and back-end production facilities)
3. Full Application and Due Diligence
  - If it is determined that a Full Applicant is reasonably likely to receive an award, the CPO will prepare a non-binding Preliminary Memorandum of Terms prior to entering the Due Diligence Phase
4. Award issuance
  - Disbursements of direct funding will be tied to project milestones in connection with both the capital expenditure components of the project and the workforce development and/or operational cost components of the project

# CHIPS Program Office (CPO) Incentives Program

- All potential applicants for incentives can now submit a “Statement of Interest” to the CPO outlining their proposed project and request for support
- On February 28, CPO released the first Notice of Funding Opportunity (NOFO) for commercial fabrication facilities (front- and back-end fabrication of leading-edge, current-generation and mature-node semiconductors):  
<https://www.nist.gov/chips/notice-funding-opportunity-commercial-fabrication-facilities>
- The next NOFO is expected to be released in late spring and will invite applications from semiconductor materials and manufacturing equipment facilities
- A third NOFO is expected to be released later this year inviting applications from R&D facilities
- Beginning March 31, 2023, the CPO will accept Pre-applications (optional) and Full applications from leading-edge facilities on a rolling basis
- Beginning May 1, 2023, the CPO will accept Pre-Applications from current-generation, mature-node, and back-end production facilities, and Full Applications beginning June 26, 2023



# CHIPS NOFO for Commercial Fabrication Facilities

The first NOFO details the many technical requirements for Pre- and Full Applications; explains the evaluation criteria and application review process; and notes expected limits on funding:

## Six core evaluation criteria:

1. Economic and National Security Objectives – this criterion will be given the most weight
  - How an application advances economic security by building sustainable domestic capacity that reduces US reliance on vulnerable or overly concentrated production, and
  - Whether applicants address national security considerations, including by securing supply chains for technologies used by government organizations and their contractors, as well as the project’s operational vulnerabilities and resilience to threats from foreign entities of concern (e.g., China)
2. Commercial Viability
3. Financial Strength
4. Project Technical Feasibility and Readiness
5. Workforce Development
6. Broader Impacts (e.g., commitments to future investment in the US; support for semiconductor R&D; diverse employment; climate and environmental responsibility; and domestic content)

# CHIPS NOFO for Commercial Fabrication Facilities

- CPO does not expect to award the full amount available under this NOFO (~28B); some funding will be awarded under future funding opportunities
- CPO generally expects that the total amount of a CHIPS award, inclusive of CHIPS Direct Funding and the principal amount of a CHIPS Loan or CHIPS Loan Guarantee, will not exceed 35% of project capital expenditures
  - CHIPS Direct Funding of between 5-15% is the likely range to expect, unless the project is ineligible for the 48D tax credit
- Recipients receiving more than \$150 million in CHIPS Direct Funding will be required to share with the US government a portion of any cash flows or returns that exceed the applicant's projections
- Applicants are expected to prepare detailed plans on workforce development (facility workforce and construction workforce, including for economically disadvantaged individuals)
  - CPO strongly encourages the use of project labor agreements (PLAs) in connection with construction projects
  - CHIPS incentives can be used to cover workforce development costs
- Applicants requesting Direct Funding over \$150 million must submit a plan to provide their facility and construction workers with access to child care
- Applicants are expected to commit to using domestic iron, steel and construction materials



# CHIPS Incentives – Considerations for Potential Applicants

- Don't delay submitting your Statement of Interest – all potential applicants must submit
- Review guidance materials published by the CPO on CHIPS.gov
  - Factsheets are available on evaluation criteria and other elements of the application process
  - FAQs published on eligibility, application process, evaluation criteria, funding, etc.
- Claw backs for:
  - Misuse of funds
  - Violating guardrails on certain capacity and/or technology expansions --> review restrictions relating to “foreign entities” of concern
- Monitor CHIPS.gov for additional guidance
  - DOC just issued and requested public comments on a proposed rule on the guardrails for awards
    - The proposed rule defines important terms related to the national security limitations and lays out procedures for funding recipients to notify DOC of any planned transactions involving expansion of semiconductor manufacturing in foreign countries of concern
  - Additionally, the Treasury Department just issued and requested public comments on a proposed rule on the advanced manufacturing investment tax credit under the CHIPS Act (48D)

# Regional Technology and Innovation Hubs (Tech Hubs Program)

**Goals:** Building and evolving innovation centers in key U.S. regions; accelerating a region's evolution into a global leader in an industry of the future; and strengthening U.S. global competitiveness with regard to critical technologies.

- The Tech Hubs program was enacted as part of the CHIPS and Science Act of 2022 (as the Regional Technology and Innovation Hub program)
- Congress appropriated the Economic Development Administration (EDA) \$500 million for the program as part of the FY 2023 Omnibus Appropriations Bill
- EDA will designate Tech Hubs, award funding for Tech Hubs strategy development (i.e., planning and capacity building), and award funding for Tech Hubs strategy implementation (i.e., projects)
- On February 14, 2023, EDA issued a Tech Hubs Request for Information (RFI) to solicit public input about the program design, structure, and evaluation of the Tech Hubs program; the comment period closed on March 16
- A Notice of Funding Opportunity (NOFO) is expected to be released in the first half of 2023

# Regional Technology and Innovation Hubs (Tech Hubs Program)

- “Eligible consortia” may apply for funds. These are defined as:
  - A consortium that includes 1 or more of each of the following-
    - (A) institutions of higher education, which may include Historically Black Colleges and Universities, Tribal Colleges or Universities, and minority-serving institutions;
    - (B) State, territorial, local, or Tribal governments or other political subdivisions of a State, including State and local agencies, or a consortium thereof;
    - (C) industry or firms in relevant technology, innovation, or manufacturing sectors;
    - (D) economic development organizations or similar entities that are focused primarily on improving science, technology, innovation, entrepreneurship, or access to capital; and
    - (E) labor organizations or workforce training organizations, which may include State and local workforce development boards
  - Consortia may also include 1 or more economic development entities and other organizations, e.g., national laboratories, Manufacturing USA Institutes
- The Secretary must ensure that at least one-third of the grants and cooperative agreements awarded to eligible consortia “significantly benefit a small and rural community”
  - “small and rural community” is defined as “a noncore area, a micropolitan area, or a small metropolitan statistical area with a population of not more than 250,000”
  - This reflects the objective of supporting regional economic development and resilience, including in small cities and rural areas, and promoting increased geographic diversity of innovation across the United States

# Regional Technology and Innovation Hubs (Tech Hubs Program)

- Award types include grants or cooperative agreements for strategy development and implementation
- The amount of an initial grant or cooperative agreement awarded to a regional technology and innovation hub cannot exceed \$150M
- Federal cost share may not exceed 80% (except in the case of an eligible consortium that represents all or part of a small and rural or other underserved community or is led by a Tribal government)
- Grants for **strategy development** may be used for, e.g.,
  - coordination of locally defined planning processes, across jurisdictions and agencies, relating to developing a comprehensive regional technology strategy;
  - identification of regional partnerships for developing and implementing a comprehensive regional technology strategy; and
  - identification or implementation of planning and local zoning and other code changes necessary to implement a comprehensive regional technology strategy

# Regional Technology and Innovation Hubs (Tech Hubs Program)

- Grants for **strategy implementation** may be used for a variety of projects, including:
  - Workforce development activities
    - Creation of partnerships between industry, workforce, nonprofit, and educational institutions, which may include community colleges, to create and align technical training and educational programs, including for a skilled technical workforce
    - Design, development, and updating of educational and training curriculum and programs, including training of trainers, teachers, or instructors tied to demonstrated regional skilled and technical workforce needs
    - Procurement of facilities and equipment, as required to train a skilled and technical workforce
    - Development and execution of programs, including traineeships and apprenticeships, to rapidly provide training and award certificates or credentials recognized by regional industries or other organizations
  - Business and entrepreneur development activities
    - Development and growth of local and regional businesses and the training of entrepreneurs, which may include support for the expansion of employee owned businesses and cooperatives.
  - Technology development and maturation activities
    - Development and deployment of technologies in sectors critical to the region served by the regional technology and innovation hub or to national and economic security, including industry-university research cooperation, proof of concept, prototype development, testing, and scale-up for manufacturing
  - Infrastructure related activities
    - Building of facilities and site connectivity infrastructure necessary to carry out workforce development, business and entrepreneur development, and technology development and maturation activities

## Defense Production Act, Title III

- Funding from the U.S. Department of Defense (DOD) is available under Title III of the Defense Production Act (DPA) via the current open call for funding proposals (approximately \$1.6B)
- Potential funding hook: the recent Critical Defense Supply Chain Presidential Determination (PD)
  - Waives limitation on award over \$50M and related Hill notification and authorization
  - Covers semiconductors, critical minerals, high-capacity batteries, and other defense-critical products
- Process: draft a White Paper for submission to DOD, followed by a detailed proposal, if there is initial DOD interest
  - Estimated time from White Paper to award (assuming the proposed project is covered by an existing PD) is 6-8 months
- Note: under its guidance, CPA will take account other funding sources when making awards
- With respect to CHIPS, DPA, Tech Hubs, IRA, and other funding sources, a supporting advocacy campaign with the Administration and Congress is going to be helpful, if not essential, to obtaining a successful result

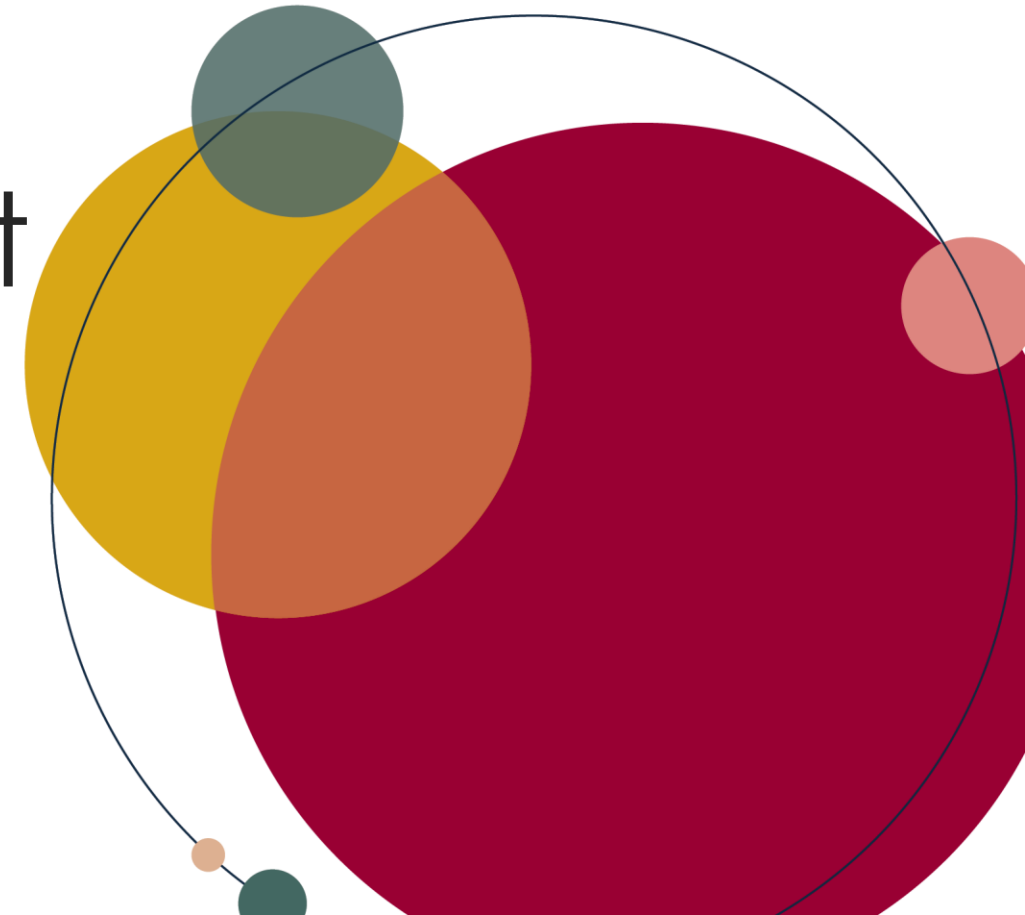


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# Tax Provisions from the CHIPS Act and the Inflation Reduction Act (IRA)

Lisa Zarlenga



# Summary of Tax Credits – IRA

- § 45 – Production of electricity from wind, solar, geothermal, hydropower, etc.
- § 45Y – Technology neutral clean electricity production
- § 45Q – Carbon oxide sequestration
- § 45U – Zero-emission nuclear power
- § 45V – Clean hydrogen
- § 45X – Manufacturing solar and wind components, batteries, and critical minerals
- § 45Z – Clean fuel
- § 40 – Alcohol, ethanol, second-generation biofuel
- § 40A – Biodiesel and biodiesel mixture
- § 40B – Sustainable aviation fuel

## PRODUCTION/USE BASED TAX CREDITS

- § 48 – Facilities for solar, storage, biogas, fuel cells, etc.
- § 48E – Technology neutral clean electricity facility or energy storage
- § 48C – Facilities for manufacturing renewable energy components, EV components, fuel cells, etc.
- § 30C – Charging and alternative fuel refueling stations
- § 30D & § 25E – Electric vehicles
- § 45W – Commercial clean vehicles
- § 25C – Energy-efficient home improvements
- § 25D – Residential clean energy property
- § 45L – Energy-efficient home construction
- § 179D – Energy-efficient commercial buildings deduction

## INVESTMENT BASED TAX CREDITS

## Summary of Tax Credits – CHIPS Act

- The CHIPS and Science Act created a new section 48D advanced manufacturing credit that provides a 25% investment tax credit for qualified costs related to an **advanced manufacturing facility**
- An advanced manufacturing facility is a facility for which the primary purpose is the manufacturing of (i) semiconductors, or (ii) semiconductor manufacturing equipment
  - Compare CHIPS Act funding provisions, which provide funding for (i) semiconductor fabrication facilities, (ii) semiconductor materials, and (iii) semiconductor manufacturing equipment
- The taxpayer cannot be a “**foreign entity of concern**,” as defined for purposes of the William M. (Mac) Thornberry National Defense Authorization Act



# Bonus Credit Structure



- Bonus = 5 times the base rate
- Laborers and mechanics must be paid prevailing wages as established by DOL
- A certain percentage of total labor hours of the project must be performed by qualified apprentices
- Applies to projects that begin construction on or after January 29, 2023

- Bonus = 10% (or 2% if wage and apprenticeship requirements are not met)
- Steel, iron, and a certain percentage of manufactured products that are part of a project must be produced in the United States (as determined under the "Buy America" requirements)

- Bonus = 10% (or 2% if wage and apprenticeship requirements are not met)
- Project is located in an energy community if it is a brownfield site or a community formerly reliant on coal or fossil fuel industries

# New Monetization Options

HISTORICALLY, TAX CREDITS COULD ONLY BE MONETIZED THROUGH A TAX EQUITY PARTNERSHIP

## • DIRECT PAYMENT ELECTION

- Allows eligible taxpayers to elect to treat the amount of the credit as a direct payment of tax liabilities and to claim a refund for any excess
- Generally available only to tax-exempt organizations, state government organizations, tribes, electric co-ops, and the Tennessee Valley Authority
- For-profit taxpayers can elect direct payment for a limited number of credits for up to five years
  - Section 45Q carbon oxide sequestration credit
  - Section 45V clean hydrogen production credit
  - Section 45X advanced manufacturing production credit
- CHIPS Act section 48D investment tax credit for semiconductor manufacturing facilities contains a direct payment election.

## • TRANSFERABILITY ELECTION

- Allows eligible taxpayers to elect to transfer all or a portion of the credit to another taxpayer
- Transfer must be for cash payment
- Cash is not includible in gross income of the transferor or deductible by the transferee
- Eligible credits can only be transferred once

# Domestic Content in Inflation Reduction Act (IRA)

- Expands existing federal income tax benefits for renewable energy for domestic content
- Domestic Content requirements satisfied if:
  - (1) **100%** of any steel or iron that is a component of qualified facility was produced in US
    - Cites FTA's rules, requiring steel/iron manufacturing processes to occur in US, except metallurgical processes for refinement of steel additives (49 CFR § 661.5)
  - (2) **40%** (20% for offshore wind) of total costs of manufactured products that are components of qualified facility are attributable to manufactured products (including components) that were mined, produced, or manufactured in US
    - For the technology neutral clean electricity production tax credit in section 45Y (which begins in 2025), the percentage increases to **45%** if construction starts in 2025, **50%** in 2026, and **55%** after 2026.
    - Similarly for the section 45Y credit for offshore wind: **20%** if starts before 2025, **27.5%** in 2025, **35%** in 2026, **45%** in 2027, and **55%** after 2027

# Domestic Content in Inflation Reduction Act (IRA)

- **Special Rules for Direct Payments Elections:** For eligible taxpayers starting construction of qualified facility after 2023, the amount of the direct payments is reduced if the domestic content requirement is not satisfied
  - In general, the direct payment is reduced to **90%**
  - However, for the technology neutral clean electricity production tax credit in section 45Y, the direct payment phases down to **90%** if construction starts in 2024, **85%** in 2025, and **0%** after 2025
- **Three exceptions:**

The qualified facility has a maximum net output of less than 1 megawatt (as measured in alternating current)

OR

Use of domestic steel, iron, or manufactured products increases overall costs of construction of qualified facility by more than 25%

OR

Covered items not produced in US in sufficient and reasonably available quantities or of a satisfactory quality

# Thank you for joining!



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