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Experts Expect Tweaks, Not Teardown, For Renewable Credits

By **Nate Beck**

Law360 (January 29, 2025, 10:46 PM EST) -- A Trump administration order to pause "green new deal" programs shouldn't halt tax credits for renewable power overnight, legal experts say, even if those programs and others within the 2022 Inflation Reduction Act could face fresh scrutiny.

Attorneys told Law360 Real Estate Authority that while one of President Donald Trump's first executive orders on Jan. 20 purported to place a 90-day stoppage on payments from the IRA, many key programs within the law should survive the action.

Trump's order prompted a memo the next day from his Office of Management and Budget clarifying that only programs that are part of a "green new deal" should be frozen and that agency leaders are free to spend money after consulting with OMB. This executive order is separate from a funding freeze that the White House rescinded Wednesday.

Tracy Nagelbush Tolk, a senior policy director in Crowell & Moring LLP's government affairs group, told Law360 that Trump's executive order — called Unleashing American Energy — was an expected first act following his campaign comments about the IRA and another Biden legislative achievement, the Bipartisan Infrastructure Law. Other means to change provisions that are supporting development projects may prove more challenging.

"We knew all these things were going to happen. We just didn't know how," Tolk said. "The executive order was the first step and congressional action on budget reconciliation and other packages is going to be the second step."

Eric Christensen, a Seattle-based principal at Beveridge & Diamond PC, said Trump's order was a "considerable overreach" since it attempts to interfere with federal spending Congress has already approved by passing the IRA, the BIL and the Infrastructure Investment and Jobs Act.

"I think that the notion that the president can just stop spending money that hasn't already been spent is wrong," Christensen said. "There's very little the president can do unilaterally."

Experts say other parts of the new Republican trifecta may simply look to tweak the IRA, because it so far has brought on economic activity in Republican districts.

IRA spending may have an outsized influence on Republican state governments in particular, according to a November analysis by the Rhodium Group and the Clean Investment Monitor from the

Massachusetts Institute of Technology.

While populous states such as California and Texas received the most funding overall, Nevada and Wyoming attracted the largest proportions of state gross domestic product in clean energy investment.

IRA investment in clean energy technology or decarbonization of industrial activity accounted for 4% of Wyoming's GDP, based on September figures, compared with 0.3% for California.

An August report from the environmental group E2 found in the first two years of the IRA, more than half of the projects supported by the law were in Republican congressional districts.

Crowell & Moring partner Carina Federico said she expects that the president's action and OMB's memo shouldn't immediately affect tax credits from the IRA that support renewable energy projects.

Changes to those programs could instead come from lawmakers and agency rulemaking that's likely to revisit the tax credits.

"I think this is a signal that the entirety of the IRA tax credits will be under discussion," Federico said. "It won't be just a limited piece."

Trump's executive order largely relies on broad language encouraging energy exploration and the production and processing of so-called rare earth minerals in claiming "burdensome and ideologically motivated regulations" are impeding such goals.

One section, "terminating the Green New Deal," however, directs agencies to halt funds for programs to build electric vehicle charging stations, specifically mentioning the $2.5 billion Charging and Fueling Infrastructure Discretionary Grant Program and the $5 billion National Electric Vehicle Infrastructure Formula Program.

Federico said even though the order targets electric vehicle charging programs in the IRA, other programs supported by the law seem to fit with his administration's goals, including tax credits incentivizing green hydrogen or carbon capture and storage.

Meanwhile, Federico pointed out that the IRA also provided $57.8 billion to the IRS through 2031 to help the agency improve customer service, upgrade technology and administer new tax credits. A potential reduction in that funding to the agency could lead to staffing shortages, for example, affecting the ability of the IRS to oversee tax credits.

Trump, in a separate Jan 21. executive order, froze new hiring at the IRS indefinitely.

Federico said a new administration could also influence IRS guidance on how to use the tax credits in the IRA. The IRS is still learning how to evaluate the tax credits, which some parties may be claiming for the first time in the current fiscal year, particularly for emerging technologies.

"The new administration could place different emphasis on the risk factors used to select tax returns claiming clean energy tax credits for audit," Federico said.

Steptoe LLP partner Lisa Zarlenga said agencies under the Trump administration are more likely to advance changes to the IRA administratively only after Congress weighs in.

Some programs in the IRA have already undergone a rulemaking process that a new administration would need to restart to implement changes without action by Congress, Zarlenga said.

For instance, the U.S. Department of the Treasury and the IRS on Jan. 3 finalized regulations for an IRA clean hydrogen tax credit program called Section 45V. The agencies fielded some 30,000 comments over a yearlong rulemaking process.

"It takes a while to engage in that activity," Zarlenga said. "Those kinds of activities might await legislative action just to see if everything remains intact."

Zarlenga, meanwhile, said one tool Congress has for evaluating agency rulemaking, the Congressional Review Act, may also be challenging to use to roll back tax credits in the IRA.

Tax credits, in particular, are tough to change with the CRA since the law only allows lawmakers to remove the rules in their entirety without adding a replacement.

"It's unlikely we'll see any CRA override for any of these energy regulations," Zarlenga said. "I think it's more likely that you'll see them go back and start and to make tweaks to them to reduce burden."

Steptoe partner Hunter Johnston told Law360 that any delays or changes to the tax credits caused by the Trump administration could bring cascading consequences for renewable energy developers.

"It's really hard to pull these projects off," Johnston said. "When you start screwing around with timing and availability [of tax credits], it creates risk for investors. Thinking that you have a political solution can really be disruptive."

Johnston said Trump's criticism of some renewable energy sources, such as offshore wind, is also at odds with the statements of some of his administration officials.

During a confirmation hearing earlier this month, Trump's pick for energy secretary, Christopher Wright, said he supported all forms of "reliable" energy, including wind.

Trump's Interior secretary nominee, Doug Burgum, meanwhile, is a proponent of carbon capture and storage technology. During his hearing, Burgum argued for prioritizing "innovation over regulation" regarding U.S. natural resources.

"All these energy credits are there to solve the same equation, that is, to foster energy investment in the low-carbon energy space," Johnson said. "It's hard to say one's bad and another one's good. They also greatly represent technological innovation."

--Additional reporting by Anna Scott Farrell, Emma Kennedy and Keith Goldberg. Editing by Brian Baresch and Jay Jackson Jr.