



OB3 Treatment of Clean Energy Tax Credits

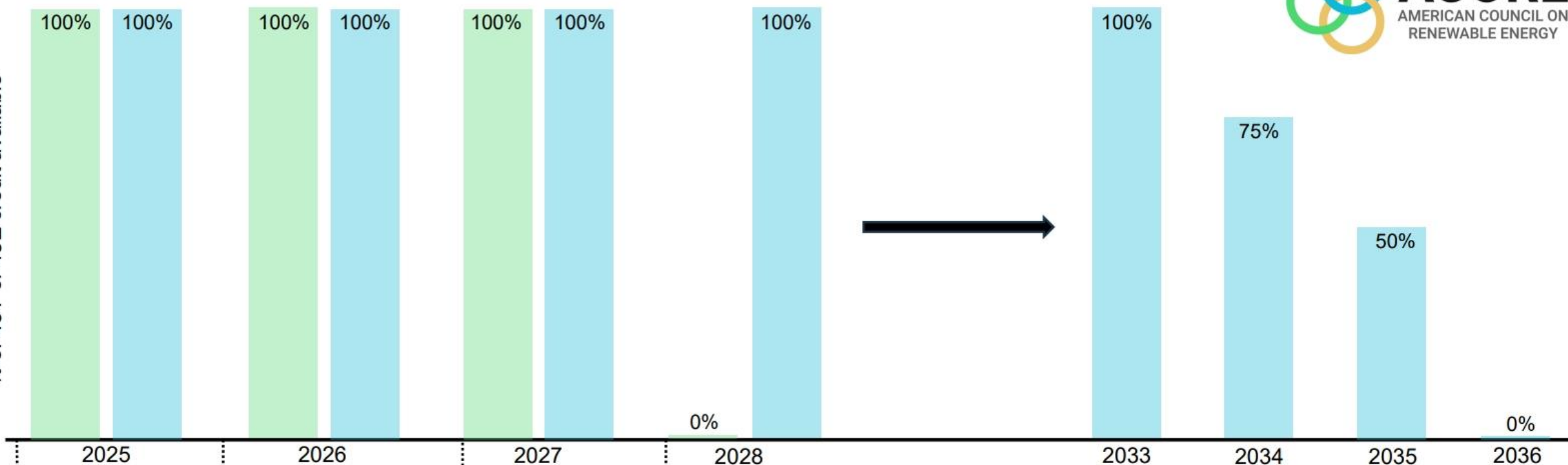
September 19, 2025



Holland & Knight

Technology-Neutral Credit (Section 45Y and 48E) Phaseout Timeline

% of 45Y or 48E credit available



▶ **July 4, 2025**
12-month period to start construction on wind and solar projects to avoid placed in service (PIS) deadline.

▶ **Jan. 1, 2026**
FEOC restrictions begin: (1) PFEs cannot claim credits this tax year; (2) Projects beginning construction must comply with material assistance rules. (Applicable to all technologies.)

▶ **July 4, 2026**
Deadline for solar/wind to begin construction to avoid 12/31/2027 PIS requirement.

▶ **Dec. 31, 2026**
Deadline for Treasury to issue (1) updated safe harbor tables for material assistance cost ratios and (2) "effective control" for licensing, IP, and related arrangements or agreements.

▶ **Dec. 31, 2027**
PIS deadline for wind and solar projects beginning construction after July 4, 2026 to claim credits.

▶ **Jan. 1, 2028**
Tax year in which 48E recapture rule begins: 100% recapture if applicable payments made that confer SFE effective control.

Legend

- **Green** = Solar and Wind (45Y/48E)
- **Blue** = All other 45Y/48E eligible technologies (Hydropower, Geothermal, Nuclear, Energy Storage, etc.)
- "FEOC"=Foreign Entity of Concern
- "PFE"=Prohibited Foreign Entities (PFEs are either Specified Foreign Entities (SFE), or Foreign Influenced Entities (FIE)).
- Tax Year = Generally, January 1 of a calendar year, but may differ if taxpayers have elected different fiscal years.

Development of BOC Requirements for Energy Tax Credits

- American Reinvestment and Recovery Act of 2009- 1603 Grant Program Guidance
- Notice 2013-29- First tax credit notice- wind
- Notice 2013-60
- Notice 2015-25
- Notice 2016-31
- Notice 2017-04
- Notice 2018-59- Solar (and other); effectively consolidated notices
- Notice 2019-43
- Notice 2020-12- CCUS
- Notice 2020-41- COVID notice
- Notice 2021-05- Partial Covid notice
- Notice 2021-41- Further COVID notice
- Other post-IRA guidance

What does it mean to “begin construction”?

- Neither the IRC nor the Treasury Regulations define what it means to “begin construction”
- There are two BOC methods established by the IRS Notices:
 1. Physical Work Test
 2. Five Percent Safe Harbor

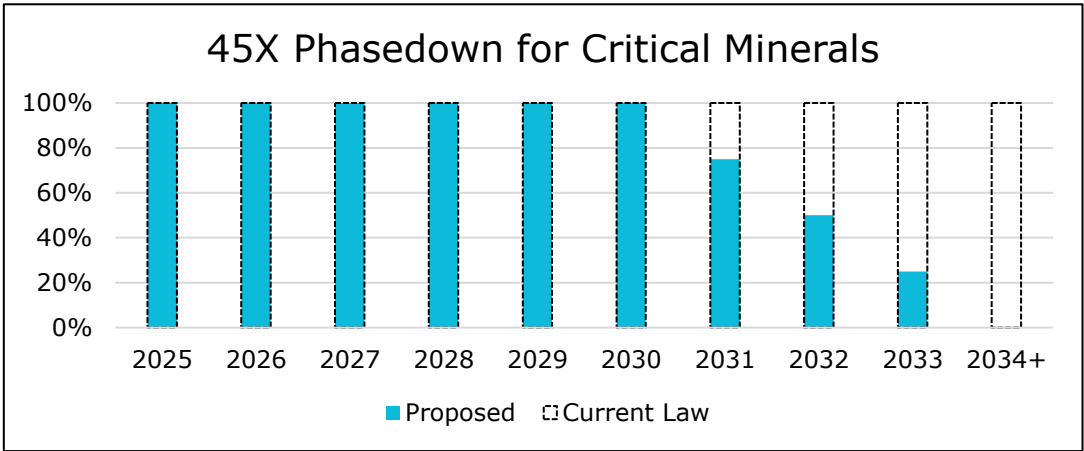
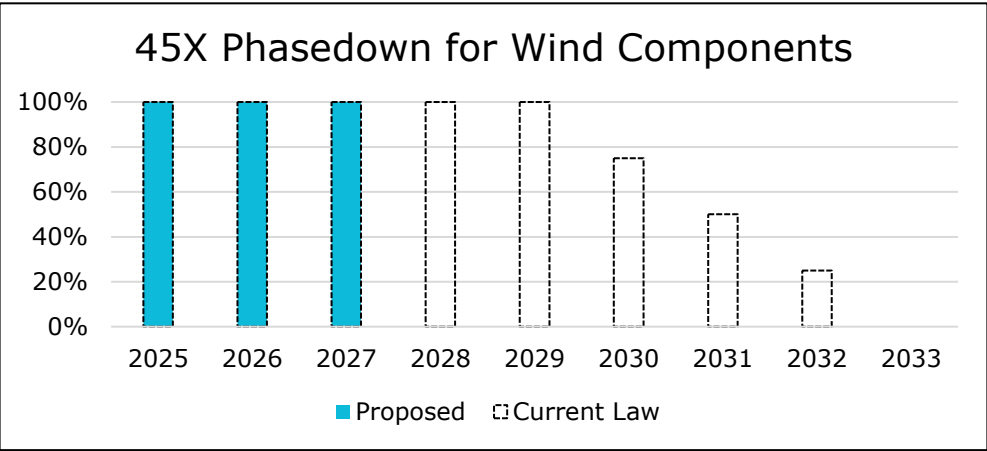
BOC Guidance Post-OBBBA

- The IRS on Aug. 15, 2025, released **Notice 2025-42**, which provides guidance on how taxpayers can establish BOC for wind and solar facilities for purposes of determining whether such facility is subject to credit termination provisions added to Sections 45Y and 48E under the OBBBA.
- Generally, Notice 2025-42 makes the following changes to the historical BOC rules for wind and solar:
 - Removes the 5 Percent Safe Harbor for all wind facilities and for solar facilities with net output of more than 1.5 MW(ac).
 - Retains the Physical Work Test with limited modifications (e.g., alters the continuity requirement by referring only to a continuous progress toward completion and not to continuous efforts).
 - Provides for a four-year continuity requirement safe harbor, thereby eliminating the 10-year continuity safe harbor for offshore wind projects and projects on federal lands.
- The notice is effective for solar and wind facilities, the construction of which begins on or after Sept. 2, 2025.
- Notice 2025-42 applies only for purposes of determining whether construction of a wind or solar facility begins by July 3, 2026.
 - It is not applicable for determining whether BOC has occurred for purposes of the FEOC material assistance rules (discussed below).

Key Issues: Advanced Manufacturing (45X)



Phaseouts



Safe Harbor

45X is similarly subject to the component-level “material assistance” restrictions under 48E and 45Y, though the cost ratios vary by sector (*see below*).

- The Treasury Department is directed to promulgate guidance updating safe harbor guidance, etc., until which point taxpayers are afforded the same two alternative pathways (i.e., Notice 2025-08; supplier certifications).

Material Assistance Cost Ratios (45X)

Sector	2026	2027	2028	2029	2030	2031	2032	2033
Wind components	85%	90%	Repealed					
Solar components	50%	60%	70%	80%	85%	85%	85%	85%
Inverters	50%	55%	60%	65%	70%	70%	70%	70%
Battery components	60%	65%	70%	80%	85%	85%	85%	85%
Critical minerals	0%	0%	0%	0%	25%	30%	40%	50%

Key Issues: Foreign Entity Restrictions

P.L. 119-21 (H.R.1 or "OBBBA") seeks to deny U.S. tax benefits to certain foreign entities, particularly those with ties to China, via aggressive new restrictions.

These restrictions deny credits for entities in two broad categories:

- 1 Prohibited Foreign Entities (Taxpayer-Level):** Includes "specified foreign entities" (Generally, entities on various U.S. government national security lists and/or controlled by the governments of China, Russia, North Korea, and Iran) or "foreign-influenced entities" (Generally, entities not individually listed under the former but for whom specified foreign entities can appoint certain leaders, as well as other factors).
Effective Date: The calendar year beginning after the date of enactment
- 2 Entities Receiving "Material Assistance" (Component-Level):** Establishes an escalating cost ratio to identify taxpayers with supply chains linked to prohibited foreign entities, attributable to all manufactured products (including components).
Effective Date: December 31, 2025, on a start-of-construction basis

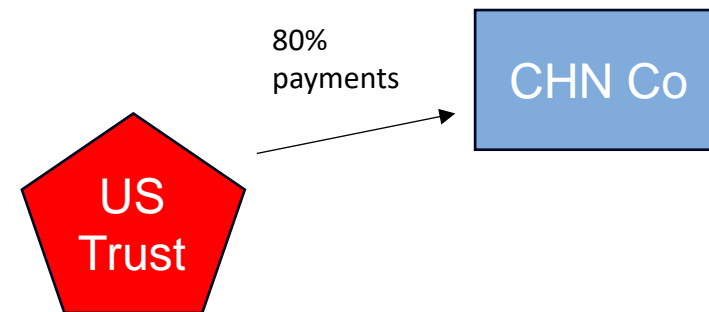
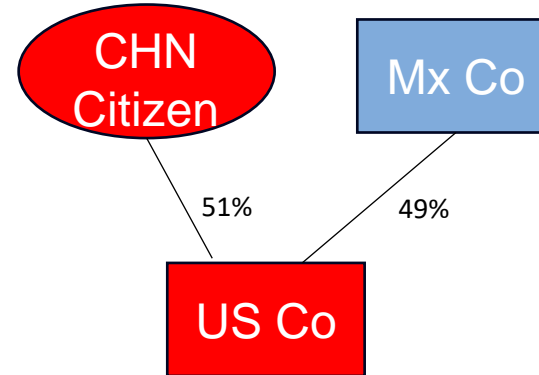
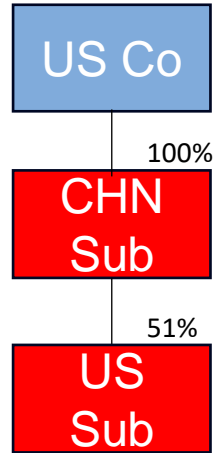
FEOC Applies Differently by Credit



Timing and Application of FEOC Restrictions for Taxpayer and Component Level Restrictions

Credit	Taxpayer-Level Restrictions			
	Specified Foreign Entity (SFE) Rules	Foreign Influenced Entity (FIE) Rules	FIE Effective Control Rule	Material Assistance
48E, 45Y (Tech-Neutral)	Tax Years After Enactment (2026)	Tax Years After Enactment (2026)	Tax Years After Enactment (2026)	Projects BOC after December 31, 2025 (2026)
45X (Adv. Manufacturing)	Tax Years After Enactment (2026)	Tax Years After Enactment (2026)	Tax Years After Enactment (2026)	Projects/Components Produced after December 31, 2025
45Q (CCUS), 45U (Nuclear), 45Z (Biofuels)	Tax Years After Enactment (2026)	Tax Years After Enactment (2026)	N/A	N/A

Three examples of Specified Foreign Entities:



When are Publicly Traded Entities not considered Foreign-Controlled Entities (a type of SFEs)?

Foreign-Controlled Entity or Not?	
Not a Foreign-Controlled Entity	<p>Securities are regularly traded on certain exchanges:</p> <ul style="list-style-type: none">• National securities exchange registered with SEC (<i>e.g.</i>, NYSE),• The national market system established under Sec. 11A of SEC Act, OR• Foreign market or exchange satisfying Treas. Reg. 1.1296-2(c)(1)(ii) (unless market or exchange is incorporated, organized under the laws of, or has its principal place of business in a covered nation (<i>e.g.</i>, China)),
Unless...	<ul style="list-style-type: none">• If <i>controlled</i> by 1 or more SFEs or 1 or more FCEs that are required to report beneficial ownership under SEC Rule 13d-3

When are Publicly Traded Entities not counted as Foreign-Influenced Entities?

Foreign-Influenced Entity or Not?	
Not a Foreign-Influenced Entity	<ul style="list-style-type: none">• Securities are regularly traded on certain exchanges (<i>i.e.</i>, on a registered national securities exchange, the national market system, or a foreign market or exchange satisfying Treas. Reg. 1.1296-2(c)(1)(ii)) (unless such market or exchange is incorporated, organized under the laws of, or has its principal place of business in a covered nation (e.g., China)), OR• At least 80% of equity securities of such entity are owned <i>directly or indirectly</i> by another entity whose securities are regularly traded on those markets or exchanges
Unless...	<ul style="list-style-type: none">• During the taxable year,<ul style="list-style-type: none">• SFE has authority to appoint a covered officer (e.g., member of board of directors, executive-level officer)• Single SFE required to report beneficial ownership under SEC Rule 13d-3 (or equivalent rules) owns 25% of the entity• Multiple SFEs required to report beneficial ownership under SEC Rule 13d-3 own, in the aggregate, 40% of the entity, OR• Issued debt, as part of original issuance, in excess of 15% of its publicly-traded debt to one or more SFEs

Key Issues: FEOC Compliance and Implementation



“Material Assistance”

- Under the “material assistance” definition, the established cost ratios represent the percentage of equipment or materials sourced from non-FEOC countries (*see below*).

Material Assistance Cost Ratios for 48E, 45Y (distinct from 45X cost ratios)

	Begin Construction In										
Credit	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Section 48E and 45Y <i>Wind and solar</i>	40%	45%	Repealed								
Section 48E and 45Y <i>Energy storage</i>	55%	60%	65%	70%	75%	75%					
Section 48E and 45Y <i>Other technologies</i>	40%	45%	50%	55%	60%	60%					

- Until guidance is issued, taxpayers may rely on:
 - Existing IRS safe harbor guidance (Notice 2025-08) for the domestic content bonus, or;
 - Certification from manufacturers or suppliers

Recapture:

- Retains a 10-year recapture for ITC investments if applicable payments to are made to a specified foreign entity.

Effective Date: 2 years after the date of enactment on a start-of-construction basis.

New Penalties for Substantial Underpayment of Tax/Inaccurate Supplier Certifications, etc.:

- Applies two new penalties for failed FEOC compliance:
 - Adds disallowance of 45X, 45Y, and 48E to existing Internal Revenue Code penalties for underpayment of tax with threshold reduction from 10% to 1%
 - Assesses penalty focused on component-level misstatements equal to 10% of the inaccuracy or \$5K, whichever is greater.

Effective Date: December 31, 2025, on a start-of-construction basis.

Overlap Between FEOC and Beginning of Construction



Safe harbor guidance issued on Aug. 15 pursuant on July 7 EO

- Takes effect for wind and solar projects beginning construction after September 2, 2025
- Establishes physical work test as singular method for determining BOC
- Continuity requirement can only be met through physical work of a significant nature

Treasury is drafting separate BOC rules for PFE material sourcing requirements

- Notice 2025-42 states the OBBBA “included separate beginning of construction rules” for FEOC rules
- Treasury is currently drafting further guidance “as is necessary and appropriate” to implement those rules

Initial action on FEOC guidance expected in the fall

- Likely to address urgent matters with limited scope; may include a request for public comment
- More comprehensive guidance expected later, likely via proposed regulations