

Practice Update

Trump Tax Bill Passes House: What Clean Energy Stakeholders Need to Know

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Early this morning, the House of Representatives passed President Donald Trump’s signature “One Big Beautiful Bill,” largely aimed at extending the 2017 tax cuts, by a single vote (215-214). The bill includes huge cut-backs to the clean energy tax credits added and/or expanded under President Joe Biden’s Inflation Reduction Act (IRA). The bill now heads to the Senate. It remains to be seen whether and to what extent changes made by the Senate will lessen the impact on the clean energy sector.

A manager’s amendment released late Wednesday evening took a hatchet to what had been, in the text of the bill released by the House Ways and Means Committee on May 12, 2025, a significantly shortened runway for the technology neutral investment tax credit (ITC) in Section 48E and production tax credit (PTC) in Section 45Y. Under current law, these credits are expected to be available for qualifying projects that start construction through at least 2036 and probably into the 2040’s given expectations of when greenhouse gas emissions levels will be reduced at least 25% from 2022 levels. With a limited exception for certain nuclear facilities, the House bill ends these credits for clean energy generation and storage facilities for which construction begins later than 60 days after enactment of the legislation or are placed

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in service after 2028, regardless of when construction started.

Another key change to the IRA climate provisions is the elimination of tax credit transferability under Section 6418 of many of the IRA tax credits. However, additional clarity is needed because the manager's amendment appeared to restore transferability for certain credits, whereas emerging commentary from House Republicans indicates more sweeping cuts to transferability (as indicated below by credit).

The bill adds a complicated set of rules that eliminate credits starting next year for projects funded by entities or constructed with components from certain prohibited foreign entities, which include North Korea, China, Russia and Iran (the FEOC Rules). The bill also eliminates the production tax credit for sales of electricity produced at qualified clean hydrogen facilities beginning next year.

The legacy ITC and PTC under Sections 48 and 45, which were eliminated for most projects that did not start construction by the end of last year, remain largely unchanged. However, the bill shortens the runway for geothermal heat pumps to claim the Section 48 ITC, which under current law had until the end of 2033 to start construction.[1]

Highlights of Key Changes

Below is a summary of the newly added FEOC Rules and key changes by Code section (and applicable tax credit), including what appears to be the dates for eliminating the transferability of each of the applicable tax credits.[2] Unless otherwise noted below, these changes are generally effective in the first taxable year following enactment of the budget reconciliation legislation.

FEOC Rules:

The bill eliminates eligibility for tax credits for projects owned or controlled by, influenced by, or for which “material assistance” was provided by certain “prohibited foreign entities.” The FEOC Rules are complicated to parse and sweeping in scope. They also vary by credit (as described with respect to the applicable credits below), with the harshest rules applying to the credits under Sections 48E, 45Y, and 45X. The far-reaching scope can be seen from the definitions that apply for purposes of the FEOC Rules:

- A “prohibited foreign entity” or “PFE” is either a “specified foreign entity” or a “foreign influenced entity.”
- A “specified foreign entity” or “SFE” includes any “foreign-controlled entity,” any entity identified as a “foreign entity of concern” or as a Chinese military company operating in the United States and certain other entities designated or identified by the U.S. government.[3]
- A “foreign-controlled entity” means (1) the government of a “covered nation” (currently North Korea, China, Russia, and Iran); (2) a person who is a citizen, national, or resident of a covered nation and not a citizen or lawful permanent resident of the United States; (3) an entity or qualified business unit (as defined in Section 989(a)) incorporated or organized under the laws of, or has its principal place of business in, a covered nation; or (4) an entity (including subsidiaries) that is more than 50% owned or controlled by an entity described in (1) through (3).
- A “foreign-influenced entity” is an entity:
 - with respect to which, during the taxable year, an SFE has the direct or indirect authority to appoint a covered officer of such entity, which includes a member of the board of directors (or equivalent governing body) or executive level officer, such as a CEO, CFO, president, COO, general counsel, or senior vice president;

- in which at least 10% of the ownership interests are held by a single SFE during such taxable year;
- in which at least 25%, in the aggregate, of the ownership interests are held by one or more SFEs during such taxable year;
- that has at least 25% of its debt, in the aggregate, held by one or more SFEs during such taxable year; or
- that, during the previous taxable year, paid dividends, interest, compensation for services, rentals or royalties, guarantees, or any other fixed, determinable, annual, or periodic amount (a) to an SFE equal to or greater than 10% of the total amount of such payments made by the entity during such year, or (b) to one or more SFEs, in the aggregate, equal to or greater than 25% of the total amount of such payments made by the entity during such year; provided, however this only applies if the entity makes the payments knowingly (or has reason to know).
- The term “material assistance from a prohibited foreign entity” means, with respect to any property, that:
 - any component, subcomponent, or applicable critical mineral (as defined in Section 45X(c)(6)) included in such property is extracted, processed, recycled, manufactured, or assembled by a PFE; or
 - any design of such property is based on any copyright or patent held by a PFE or any know-how or trade secret provided by a PFE.
 - Material assistance from a PFE does not include any assembly part or constituent material if such part or material is not directly acquired from a PFE. For this purpose, assembly parts are subcomponents or collections of subcomponents that (1) are not uniquely designed for use in the construction of a qualified facility described in Section 45Y

or Section 48E or an eligible component described in Section 45X and (2) are not exclusively or predominately produced by PFEs.

KEY CHANGES BY CODE SECTION:

Section 45Y — Clean Electricity Production Credit

- No Section 45Y PTC for projects that start construction more than 60 days after enactment or are placed in service after 2028.
- Exception retains the Section 45Y PTC for (a) any advanced nuclear facility (as defined in Section 45J(d)(2)) for which construction commences by the end of 2028, and (b) any expanded nuclear facility the design for which is approved by the Nuclear Regulatory Commission and the expansion begins by the end of 2028.
- FEOC Rules:
 - No Section 45Y PTCs for projects that start construction after 2025 if construction includes material assistance from a PFE.
 - Starting with the first taxable year following enactment, no Section 45Y PTCs can be claimed by any taxpayer that is an SFE during the taxable year in which the credit will be claimed.
 - Starting with the second taxable year after enactment, no Section 45Y credit can be claimed if either the taxpayer (i) is a foreign-influenced entity; or (ii) makes payments of interest, dividends, compensation for services, rentals or royalties, guarantees, or any other type of fixed, determinable, annual, or periodic amount to one or more prohibited foreign entities (PFE Payments) equal to or greater than a specified percentage of all payments with respect to electricity production made by the taxpayer during the year. The specified percentage is 5% in the case of a PFE Payment made to a single PFE and 15%, in the aggregate,

in the case of PFE Payments made to two or more PFEs.

- No Section 45Y PTCs for any investment during the taxable year with respect to expenditures for qualified residential solar electric, solar water heating, fuel cell, or small wind energy property (within the meaning of Section 25D) if the taxpayer rents or leases such property to a third party during the taxable year and the lessee would qualify for the Section 25D residential clean energy credit if it owned the property.
- But for the post-vote comments from House Republicans, transferability appeared to have been restored under the manager's amendment. Prior to the amendment, the bill removed transferability beginning with projects that start construction after two years from the date of enactment. Accordingly, additional clarity is needed.

Section 48E — Clean Electricity Investment Credit

- No Section 48E ITC for projects that start construction more than 60 days after enactment or are placed in service after 2028.
- Exception retains the Section 48E ITC for investments in any (a) advanced nuclear facility (as defined in Section 45J(d)(2)) for which construction commences by the end of 2028, and (b) expansion of a nuclear facility the design for which is approved by the Nuclear Regulatory Commission and the expansion begins by the end of 2028.
- FEOC Rules:
 - No Section 48E ITC for facilities and energy storage technology that start construction after December 31, 2025 if construction includes material assistance from a PFE.
 - Starting with the first taxable year following enactment, no Section 48E ITC can be claimed by any taxpayer that is an SFE.

- Starting with the second taxable year after enactment, no Section 48E ITC can be claimed if either the taxpayer (i) is a foreign-influenced entity; or (ii) makes PFE Payments equal to or greater than a specified percentage of all payments with respect to electricity production made by the taxpayer during the year. The specified percentage is five percent in the case of a PFE Payment made to a single PFE and 15%, in the aggregate, in the case of PFE Payments made to two or more PFEs.
- For taxable years beginning after enactment, taxpayers are subject to recapture of the entire Section 48E ITC if they make PFE Payments equal to or greater than the specified percentage in any year during the 10-year period beginning on the date the facility is placed in service. Recapture applies to the entire Section 48E credit claimed by the taxpayer.
- Annual capacity allocations for purposes of claiming the low income communities bonus credit under Section 48E(h) will cease after 2028, with no carryover of any unallocated capacity. To claim the Section 48E(h) bonus credit, the facility must be placed in service by the earlier of four years from the capacity allocation award and December 31, 2028.
- But for the post-vote comments from House Republicans, transferability appeared to have been restored under the manager's amendment. Prior to the amendment, the bill removed transferability beginning with projects that start construction after two years from the date of enactment. Accordingly, additional clarity is needed.

Section 45Q — Carbon Capture and Sequestration Credit

- Generally leaves the current Section 45Q credit structure in place, but applies the FEOC Rules (discussed below).

- FEOC Rules:
 - Starting with the first taxable year following enactment, no Section 45Q credit can be claimed by any taxpayer that is an SFE.
 - Starting with the second taxable year following enactment, no Section 45Q credit can be claimed if the taxpayer is a foreign-influenced entity.
- But for the post-vote comments from House Republicans, transferability appeared to have been restored under the manager's amendment. Prior to the amendment, the bill removed transferability beginning with projects that start construction after two years from the date of enactment. Accordingly, additional clarity is needed.

Section 45X — Advanced Manufacturing Production Credit

- Wind energy components sold after December 31, 2027, are not eligible for the credit.
- Solar components and critical minerals sold after December 31, 2031, are not eligible for the credit. This eliminates the 25% phase-down of the credit currently available for sales of eligible components during calendar year 2032.
- FEOC Rules:
 - No Section 45X credits can be claimed with respect to eligible components sold after December 31, 2031, eliminating the 25% phase-down credit currently available for eligible components sold during 2032.
 - Starting with (i) the first taxable year following enactment, no Section 45X credits can be claimed by any taxpayer that is an SFE, and (ii) the second taxable year following enactment, no Section 45X credits can be claimed by any taxpayer that is a foreign-influenced person.
 - Starting with the second taxable year after enactment, no Section 45X credits can be

claimed by a taxpayer with respect to sales during such year of any eligible component category if the taxpayer makes PFE Payments equal to or greater than a specified percentage of the total of all such payments made by the taxpayer during such year that are related to the production of eligible components included within such eligible component category. The specified percentage is 5% in the case of a PFE Payment made to a single PFE and 15%, in the aggregate, in the case of PFE Payments made to two or more PFEs.

- Starting with the second taxable year after enactment, an eligible component for purposes of the credit does not include any property that includes material assistance from a PFE or is produced subject to a licensing agreement, valued in excess of \$1 million, with a PFE.
- Additional clarity is needed on how, if at all, the bill affects transferability of Section 45X credits. However, it could appear that the bill eliminates transferability of Section 45X credits with respect to components sold after December 31, 2027.

Section 45U — Zero-Emission Nuclear Power Production Credit

- Section 45U PTC terminates for taxable years beginning after December 31, 2031, which is one year earlier than under current law.
- FEOC Rules:
 - Starting with the first taxable year following enactment, no Section 45U credit can be claimed by any taxpayer that is an SFE.
 - Starting with the second taxable year following enactment, no Section 45U credit can be claimed by any taxpayer that is a foreign influenced entity.

While not entirely clear, it appears that the amendment restored transferability for Section 45U credits. Whereas the original bill appeared to end

transferability for Section 45U credits for energy produced and sold after December 31, 2027.

Section 48 — Energy Credit for Geothermal Heat Pumps (GHP)

- No Section 48 credit for GHP projects that begin construction after 2031.
- The bill also begins to phase out the available credit three years earlier than under current law, with the base level ITC reduced to 5.2% if construction starts in 2030 and 4.4% if construction starts during 2031.
- FEOC Rules:
 - Starting with the first taxable year following enactment, no Section 48 credit can be claimed by any taxpayer that is an SFE.
 - Starting with the second taxable year following enactment, no Section 48 credit can be claimed for GHP projects if the taxpayer is a foreign-influenced entity.
- Although not entirely clear, it appears that there is no transferability for GHP projects that start construction after two years from the date of enactment.

[1] The House bill also eliminates all of the tax credits for purchases of EVs and EV charging stations, as well as consumer credits for rooftop solar and energy efficient property, none of which are discussed in this alert.

[2] Unless otherwise stated, all capitalized references to Sections are to the applicable section of the Internal Revenue Code of 1986, as amended.

[3] The other identified or designated entities include any entity (1) designated by the Secretary of State as a foreign terrorist organization; (2) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets

Control of the Department of the Treasury; (3) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under certain laws; (4) determined by the Secretary of Commerce, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States; (5) that is a certain entity associated with the Xinjian Uyghur Autonomous Region; and (6) that is a certain battery producing entity.

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