

IRS Interim Guidance on FEOC Rules: Compliance with the Material Assistance Restrictions

On February 12, 2026, the Department of the Treasury (“Treasury”) and the Internal Revenue Service (the “IRS”) issued Notice 2026-15 (the “Notice”) providing interim guidance in respect of the expanded foreign entity of concern (“FEOC”) rules enacted under the One Big Beautiful Bill Act (“OBBBA”) (see our previous memo on the OBBBA [here](#)). The Notice provides guidance primarily on compliance with the “material assistance” restrictions under the OBBBA that prevent taxpayers from claiming credits under Sections 45Y, 48E and 45X of the Internal Revenue Code (the “Code”) where the costs of content sourced from a “prohibited foreign entity” and incorporated into the relevant qualified facility, energy storage technology or eligible component exceed a specified percentage. This memorandum summarizes the key provisions of the Notice, including the calculation methodologies for determining compliance with the applicable material assistance cost ratio (“MACR”), the availability of interim safe harbors for certain technologies and Treasury’s and the IRS’s preview of forthcoming proposed regulations regarding the FEOC rules.

EXECUTIVE SUMMARY

- **Focus on Material Assistance:** The Notice primarily addresses MACR calculation methodologies and does not provide robust guidance on other open questions relating to the expanded FEOC rules, including on the definition of “prohibited foreign entity” and what constitutes “effective control” by a prohibited foreign entity.
- **Interim Safe Harbors:** For purposes of determining the MACR, the Notice establishes three interim safe harbors that are available to taxpayers for certain technologies:
 1. an identification safe harbor that permits taxpayers to rely on existing domestic content tables to identify manufactured products, manufactured product components and constituent materials;
 2. a cost percentage safe harbor that allows the use of assigned cost percentages from the existing domestic content tables in lieu of actual cost data; and
 3. a certification safe harbor that permits taxpayers to rely on supplier certifications.

- **General MACR Calculation Rules:** If the relevant technology is not covered by the interim safe harbors, taxpayers may use a general calculation method that traces actual direct costs attributable to each manufactured product, manufactured product component or constituent material incorporated into a qualified facility, energy storage technology or eligible component. Given that domestic content tables do not yet exist for all technologies (*e.g.*, battery cells, nuclear and geothermal), taxpayers will need to rely on the general MACR calculation rules for such technologies until additional technology-specific domestic content tables are published.
- **Effective Control:** If a taxpayer pays a specified foreign entity under an intellectual property (“IP”) agreement relating to a qualified facility, energy storage technology or eligible component entered into or modified on or after July 4, 2025, the foreign entity is treated as exercising “effective control” over the taxpayer. This renders the taxpayer a “foreign-influenced entity” (and therefore a prohibited foreign entity), disqualifying it from receiving tax credits under

Sections 45Y, 48E, or 45X. The Notice does not provide comprehensive guidance on the application of the other “effective control” factors initially proposed under the OBBBA.

- **80/20 Rule Application:** For facilities claiming clean energy tax credits under the 80/20 Rule (*i.e.*, for repowering or upgrades), only new property is considered in the MACR calculation and used property is disregarded.
- **Interim Guidance:** Treasury and the IRS have indicated that they intend to issue proposed regulations and further guidance addressing the definition of prohibited foreign entity and other material assistance issues, including publishing new safe harbor tables. Generally, taxpayers may only rely on the Notice’s general MACR calculation rules up to and including 60 days after forthcoming proposed regulations, and on the interim safe harbors up to and including 60 days after new safe harbor tables are published (for tax credits under Sections 45Y and 48E) or up to and including the date of publication of such tables (for tax credits under Section 45X).

BACKGROUND

The FEOC rules were initially introduced under the Infrastructure Investment and Jobs Act of 2021 (the “IJA”), and prohibited federal grants from being awarded to projects that were sourced from a “foreign entity of concern” (*i.e.*, the covered nations of China, Russia, Iran, and North Korea). When the Inflation Reduction Act of 2022 (the “IRA”) was passed, the FEOC rules were applied only in the context of complying with domestic content requirements to qualify for the new electric vehicle tax credit (Section 30D of the Code), specifically the source of critical minerals or battery components used in the production of electric vehicle batteries. Under the OBBBA, the FEOC rules were significantly expanded to apply to the clean electricity production credit (Section 45Y of the Code), the clean electricity investment credit (Section 48E of the Code) and the advanced manufacturing production credit (Section 45X of the Code). In addition, the FEOC rules were expanded to apply to “prohibited foreign entities” (“PFEs”), which include entities with indirect connections to

covered nations through “foreign-influenced entities” and “specified foreign entities”. The expanded rules are commonly referred to as either the “FEOC rules” or the “PFE rules”.

The expanded FEOC rules under the OBBBA can be broadly split into three categories:

1. Ownership restrictions that bar taxpayers that are themselves PFEs from claiming credits;
2. Effective control restrictions that can disqualify taxpayers based on certain contractual arrangements with PFEs, including licensing arrangements; and
3. Material assistance restrictions that deny credits for qualified facilities, energy storage technologies or eligible components that incorporate content sourced from a PFE in excess of a specified percentage (the “Material Assistance Restrictions”).

The Notice focuses primarily on the Material Assistance Restrictions and provides only limited guidance regarding the definition of a PFE and the effective control restrictions. Treasury and the IRS have indicated that they intend to issue more comprehensive proposed regulations and further guidance on the remaining open questions relating to the expanded FEOC rules.

The Material Assistance Restrictions require taxpayers to calculate a MACR by tracing the direct costs attributable to each component in a qualified facility, energy storage technology or eligible component—a potentially burdensome exercise given the complexity and opacity of supply chains. For the purpose of calculating MACR, the OBBBA looks to the developer’s costs rather than the supplier’s costs, which differs from the domestic content guidance initially provided in connection with the electric vehicle tax credit. This distinction could simplify compliance for developers, as suppliers are often reluctant to disclose cost information that may be commercially sensitive or confidential. Under the MACR framework, the proportion of content that cannot be sourced from a PFE increases over time. A breakdown of the MACR percentage thresholds for credit eligibility is included as [Annex I](#).

The Notice provides two pathways for calculating the MACR: (1) the Interim Safe Harbors (as defined below), which substitute pre-assigned cost percentages for actual cost data for certain technologies and offer a streamlined method for taxpayers seeking to reduce compliance burdens and (2) the General MACR Calculation Rules (as defined below), which require tracking actual direct costs where the Interim Safe Harbors are not available.

INTERIM SAFE HARBORS

The Notice provides three Interim Safe Harbors (the “[Interim Safe Harbors](#)”) that taxpayers may use in calculating the MACR—the Identification Safe Harbor, the Cost Percentage Safe Harbor and the Certification Safe Harbor (each as defined below). These safe harbors eliminate the need for taxpayers to trace actual costs throughout the supply chain.

A. Identification Safe Harbor

Taxpayers may use the safe harbor tables published in Notice 2023-38, Notice 2024-41 or Notice 2025-08, which were put in place to help developers

comply with the domestic content requirements under the IRA (the “[Safe Harbor Tables](#)”), to identify manufactured products, manufactured product components and constituent materials for listed qualified facilities, energy storage technologies or eligible components as part of the MACR determination (the “[Identification Safe Harbor](#)”). The Safe Harbor Tables are available for ground-mount and rooftop solar, land-based wind, battery energy storage, hydropower and pumped hydropower storage and certain Section 45X components (e.g., solar modules, battery modules and inverters). The Identification Safe Harbor is available only for a project listed as an “Applicable Project” in the Safe Harbor Tables and only for eligible components specifically listed in the Notice (e.g., various inverters, solar modules and battery modules using battery cells).

Key considerations for the Identification Safe Harbor include:

- [Exclusive and Exhaustive Lists](#): The lists of manufactured products and manufactured product components in the Safe Harbor Tables are treated as exclusive and exhaustive for purposes of the MACR calculation. Any manufactured products or manufactured product components not listed in the applicable tables are disregarded. Further safe harbor tables are expected to be published later in 2026 for technologies and components that are not listed in the Safe Harbor Tables (e.g., battery cells, nuclear and geothermal).
- [Unutilized Items](#): Any listed manufactured product or manufactured product component that is not actually utilized as an input to the taxpayer’s qualified facility, energy storage technology or eligible component is disregarded.
- [Steel and Iron](#): Steel or iron items or products are disregarded for purposes of the Identification Safe Harbor.

- Qualified Interconnection Property: The Identification Safe Harbor cannot be used for qualified interconnection property because the Safe Harbor Tables include only manufactured product and manufactured product components for qualified facilities, which definitionally do not include qualified interconnection properties. Therefore, calculations for qualified interconnection property must follow the General MACR Calculation Rules, though taxpayers may still use the Certification Safe Harbor to determine direct costs and PFE status as part of that calculation.

B. Cost Percentage Safe Harbor

Taxpayers using the Identification Safe Harbor may also elect to use the assigned cost percentages from the Safe Harbor Tables to determine direct costs or direct material costs in lieu of tracking actual costs (the “Cost Percentage Safe Harbor”). The Cost Percentage Safe Harbor requires taxpayers to first use the Identification Safe Harbor to determine which manufactured products and subcomponents (or, where applicable, constituent materials) must be taken into account for the relevant technology. The taxpayer may apply the applicable Safe Harbor Table’s assigned cost percentages to each manufactured product, subcomponent and constituent material and identify which of those items are produced by, or sourced from, a PFE. The MACR is then derived by comparing the assigned cost percentages attributable to non-PFE content against the overall assigned cost percentages for the identified items.

C. Certification Safe Harbor

Taxpayers may rely on a certificate from a direct supplier to determine whether items are produced by a PFE and/or to allocate non-PFE costs (the “Certification Safe Harbor”). The Certification Safe Harbor can be used independently of the Cost Percentage Safe Harbor, including for projects or eligible components not listed in the Safe Harbor Tables.

The Notice clarifies that a taxpayer may obtain from its direct suppliers a certificate certifying either: (a) the total direct costs to the taxpayer (or total direct material costs, as applicable) of the manufactured product, manufactured product component, eligible component or constituent material that was not produced by, or sourced from,

a PFE or (b) that such item was not produced by, or sourced from, a PFE.

Taxpayers cannot rely on certifications they know or have reason to know are inaccurate. If a taxpayer knows or has reason to know that a manufactured product, manufactured product component, eligible component or constituent material was produced by, or sourced from, a PFE, the taxpayer must treat all direct costs with respect to such property as being produced by, or sourced from, a PFE. The Notice does not provide further guidance on what constitutes knowledge or a basis for knowing that a certification is inaccurate.

GENERAL MACR CALCULATION RULES

If the relevant technology is not covered in any of the Safe Harbor Tables, taxpayers may calculate the MACR by tracing actual direct costs attributable to each manufactured product, manufactured product component or constituent material incorporated into a qualified facility, energy storage technology or eligible component (the “General MACR Calculation Rules”). The General MACR Calculation Rules may also be used by taxpayers that prefer to rely on actual cost data rather than the assigned cost percentages in the Safe Harbor Tables.

Key considerations for the General MACR Calculation Rules include:

- Components of Direct Costs: For credits under Sections 45Y and 48E, direct costs include direct material costs and direct labor costs. If a taxpayer acquires a manufactured product rather than producing it, the taxpayer’s direct costs are its acquisition costs with respect to that manufactured product. However, direct costs (including labor costs) for incorporating the manufactured product into the facility do not count as direct costs for manufactured products.

For Section 45X eligible components, direct material costs include materials that become an integral part of the eligible component or are consumed in the ordinary course of production. Freight-in and tariffs paid or incurred by the taxpayer generally are treated as direct material costs.

- Averaging and Tracking Methods: For qualified facilities and energy storage technologies under Sections 45Y and 48E, the Notice provides two options for applying averaging methodologies: (1) a *de minimis* assignment-based tracking method, which permits taxpayers to assign manufactured products or manufactured product components of the same type to facilities placed in service during the same taxable year without individually tracking them, provided that the aggregated assigned items represent less than 10% of total direct costs and (2) for energy storage technologies with a maximum net output of less than one megawatt, taxpayers may calculate average costs and PFE production percentages for manufactured products and manufactured product components of the same type placed in service during a specified period, provided they are not using the *de minimis* tracking method.

For Section 45X eligible components, taxpayers may apply an averaging convention for constituent materials of the same type (averaged over an elected “specified period of time”) to determine direct material costs.

Reliance Timing

The Notice establishes separate reliance periods for the General MACR Calculation Rules and for the Interim Safe Harbors.

- General MACR Calculation Rules: Taxpayers may rely on the General MACR Calculation Rules (and effective control guidance) set forth in the Notice for (a) any Section 45Y or 48E projects that begin construction after December 31, 2025, up to and including 60 days after the publication of the forthcoming proposed regulations and (b) any Section 45X eligible components sold in taxable years beginning after July 4, 2025, up to and including 60 days after the publication of the forthcoming proposed regulations.
- Interim Safe Harbors: Taxpayers may rely on the Interim Safe Harbors set forth in the Notice for (a) any Section 45Y or 48E projects that begin construction after December 31, 2025, up to and including 60 days after the publication of the forthcoming safe harbor tables, and (b) any Section 45X eligible components sold in taxable years beginning after July 4, 2025, up to and including the date that the safe harbor tables are published. Treasury is required to issue safe harbor tables no later than December 31, 2026.

Consequences of Non-Compliance with the OBBBA and Material Assistance Restrictions

Taxpayers face significant consequences for failing to comply with the Material Assistance Restrictions, including disqualification, loss of tax credits and monetary penalties.

- Credit Disallowance: The most immediate consequence of non-compliance is losing the tax credit altogether. If a project does not meet certain cost thresholds demonstrating that the required percentage of its content came from non-prohibited sources, it becomes ineligible for the credit. These thresholds vary by technology type and increase over time (see the MACR percentage thresholds for credit eligibility included as [Annex I](#)).
- Accuracy-Related Penalties: Taxpayers who underpay taxes due to accuracy errors face a 20% penalty on the underpayment. Under the OBBBA, the rules for triggering this penalty are more strict for material assistance errors. Normally, there is a substantial understatement of income tax if the understatement exceeds the greater of 10% of the tax required to be shown on the return or \$5,000. For disallowances of applicable tax credits due to material assistance errors, the 10% threshold is reduced to 1%. This means even a small mistake can result in significant penalties.

Other Important Items

- **Effective Control:** The Notice provides general guidance regarding effective control under IP licensing agreements. If a taxpayer makes a payment to a specified foreign entity under any IP licensing agreement with respect to a qualified facility, energy storage technology or eligible component, and such agreement was entered into or modified on or after July 4, 2025, the specified foreign entity is treated as exercising effective control over the taxpayer's facility and the taxpayer would be considered a foreign-influenced entity, regardless of whether the licensing agreement includes any other element of control.

The Notice does not provide comprehensive guidance on the other “effective control” factors initially proposed under the OBBBA or address the many questions regarding whether certain common contractual arrangements may inadvertently trigger effective control.

- **Anti-Abuse Rules:** The Notice states that Treasury and the IRS intend to propose regulations to prevent entities from evading, circumventing or abusing the application of restrictions with respect to prohibited foreign entities, including through transfers or alterations of rights, property or both, including any such act resulting in temporary lapses in restricted foreign ownership or control.
- **80/20 Rule:** A facility that is treated as a qualified facility by virtue of the 80/20 Rule (*i.e.*, a retrofitted facility in which the fair market value of the used property does not exceed 20% of the facility's total value) may only consider the direct costs of new manufactured products and manufactured product components incorporated into such a facility and used property is generally disregarded.

- **Recordkeeping Requirements:** Documentation supporting each MACR determination should be retained for at least six years. This is driven by the rule that deficiencies attributable to an error in the MACR determination may be assessed within six years after the date the return is filed.

CONCLUSION

The Notice provides Treasury's initial guidance on the expanded FEOC rules under the OBBBA and provides Interim Safe Harbors to assist taxpayers in streamlining material assistance compliance. These provisions offer taxpayers a clearer path for evaluating their supply chains, calculating costs and assessing whether qualified facilities, energy storage technologies or eligible components satisfy the applicable MACR thresholds. However, given the temporary nature of the General MACR Calculation Rules and Interim Safe Harbors, taxpayers should plan their compliance approach with these windows in mind.

While the Notice provides some welcome clarity on the operation of the FEOC rules, significant uncertainty remains, particularly regarding the definition of PFE, the “effective control” restrictions, the boundaries of contractual relationships that may trigger foreign-influenced entity status and the mechanics of the tax credit recapture regime. Treasury and the IRS have indicated that they intend to issue more comprehensive proposed regulations and additional guidance on these topics, which the market will require for further clarity on these subject matters. The OBBBA requires safe harbor tables to be published no later than December 31, 2026.

The public comment period on the Notice ends on March 30, 2026. Under standard Administrative Procedure Act notice-and-comment procedures, Treasury and the IRS will be required to consider and respond to substantive public comments before issuing final regulations.

ANNEX I

MATERIAL ASSISTANCE COST RATIO THRESHOLDS

Year	Clean Electricity (48E / 45Y)	Energy Storage (48E / 45Y)	Solar Components (45X)	Wind Components (45X)	Inverters (45X)	Battery Components (45X)	Critical Minerals (45X)
2026	40%	55%	50%	85%	50%	60%	0
2027	45%	60%	60%	90%	55%	65%	0
2028	50%	65%	70%	N/A	60%	70%	0
2029	55%	70%	80%	N/A	65%	80%	0
2030	60%	75%	85%	N/A	70%	85%	25%
2031	60%	75%	85%	N/A	70%	85%	30%
2032	60%	75%	85%	N/A	70%	85%	40%
After 2032	60%	75%	85%	N/A	70%	85%	50%

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