

## House Proposes Scaling Back of Renewable Incentives — Next Stop, Senate

28 May 2025

On May 22, 2025, the House narrowly passed a reconciliation package, titled the “One, Big, Beautiful Bill Act” (the Bill). As drafted, the Bill includes proposed tax law changes that would have sweeping effects across many of the renewable energy tax credit provisions in the Inflation Reduction Act (such proposed changes, the Proposal).<sup>1</sup> The Proposal’s most significant proposed changes include:

- an extension of time for a taxpayer to be eligible for clean fuel production tax credits (PTCs);
- elimination of the clean electricity investment tax credits (ITCs) and PTCs for qualified facilities that (1) do not begin construction within 60 days after the Bill’s enactment or (2) are not placed in service by December 31, 2028;
- a phased-in elimination of credit transferability under Section 6418, with transferability of carbon capture PTCs being eliminated for projects that begin construction more than two years after the Bill’s enactment and transferability of advanced manufacturing and clean fuels PTCs being eliminated beginning in 2028;
- eliminating tax credits after 2025 for commercial and residential electric vehicles (with a phase-down depending on volume of cars sold), residential solar systems for individuals, charging stations, hydrogen, and energy efficient homes; and
- imposing certain foreign supply chain and ownership restrictions on taxpayers seeking ITCs and PTCs.

Notably, the Proposal — at least in its current form — does not propose to amend provisions related to PTCs under Section 45 or ITCs under Section 48.

The Bill now heads to the Senate, which is expected to revise the Bill, potentially including certain aspects of the Proposal. As a result, the Proposal, including the provisions detailed below, are subject to further revision, and potentially significant

changes, as the Bill moves through the legislative process.

If the Proposal is passed in its current form, **the following impacts should be considered:**

- Taxpayers **sourcing materials and components from China** must analyze their supply chain and non-U.S. ownership structure to evaluate ongoing ITC/PTC eligibility.
- Taxpayers utilizing Sections **45Y** and **48E** must ensure (1) that they begin construction on their qualified facility within 60 days after the Bill's enactment and (2) that such qualified facility is placed in service prior to January 1, 2029.
- Taxpayers utilizing Sections **45Q**, **45X** and **45Z** must consider alternatives to transferability in certain instances, with additional pressure on **45Z** due to its general inability to access "direct pay."
- Taxpayers utilizing Section **45Q** and seeking to utilize transferability as a source of monetization should begin construction prior to the second anniversary of the Bill's enactment.

## Key Proposals Affecting Renewable Tax Credits

### Foreign Entity Of Concern (FEOC) Proposals

Historically, direct or indirect ownership by certain individuals and entities incorporated in, or with a strong nexus to, China, North Korea, Russia or Iran (each, a FEOC or a "covered nation") jeopardized tax credit availability under the clean vehicle and advanced microchip tax credits. The Proposal would introduce new complicated FEOC restrictions that could limit taxpayers' access to the (1) clean electricity ITCs and PTCs, (2) carbon capture PTCs, and (3) advance manufacturing and clean fuels PTCs. The earliest of these restrictions would first apply in 2026, with even more onerous FEOC restrictions applying beginning in 2028.<sup>2</sup>

In general, the proposed FEOC restrictions are in two categories: (1) an ownership- and control-based approach (the Ownership and Control Approach), and (2) a supply chain-based approach (the Supply Chain Approach).

*FEOC Ownership and Control Considerations (Applied to Sections 45Q, 45U, 45X, 45Y, 45Z and 48E)*

The Ownership and Control Approach would first apply beginning in 2026. Under the Ownership and Control Approach, any taxpayer that is a “specified foreign entity” would be precluded from claiming ITCs and PTCs.

The Proposal would define a “specified foreign entity” as any (1) covered nation, (2) entity that is 50% or more owned by a covered nation, (3) entity that is organized or has its principal place of business in a covered nation, (4) entity that benefits from Uyghur forced labor in the production of its products or (5) entity that is 50% or more owned by certain battery manufacturers (e.g., CATL, BYD, Envision Energy, Hithium, etc.).

In addition, beginning in 2028, any “foreign influenced entity” would be precluded from claiming ITCs or PTCs. The Proposal would define a “foreign-influenced entity” to include cases where: (1) a specified foreign entity (a) can appoint a covered officer to the taxpayer, (b) holds 10% of the equity (25% if two or more specified entities hold equity), or (c) holds 25% or more of the entity’s debt; or (2) in the prior taxable year, 10% of certain payments, including compensation, were knowingly made by the taxpayer to the specified foreign entity (or 25% of all payments if payments are made to multiple specified foreign entities).<sup>3</sup>

#### *FEOC Supply Chain Considerations (Applied to Sections 45X, 45Y and 48E)*

Under the Supply Chain Approach, a taxpayer would be precluded from claiming certain credits if the taxpayer received “material assistance from a prohibited foreign entity.” This FEOC restriction would apply to (1) the ITC under Section 48E and the PTC under Section 45Y with respect to a facility for which construction begins after December 31, 2025, if the construction received material assistance from a prohibited foreign entity (i.e., since such facility would not be a “qualified facility”), and (2) the PTC under Section 45X, for taxable years starting two years after the Bill’s enactment.

The Proposal would define a “prohibited foreign entity” as any entity that is either a “specified foreign entity” or a “foreign-influenced entity.” And “material assistance from a prohibited foreign entity” would mean, with respect to property, (1) that a prohibited foreign entity provided, extracted, assembled, processed, recycled or manufactured any components, subcomponents or critical minerals (within the meaning of Section 45X) included in the property, and (2) that the property was manufactured using a prohibited foreign entity’s copyright, patent, know-how or trade secret.<sup>4</sup>

Significant Treasury and IRS guidance would be needed to understand the impact of

the FEOC rules on taxpayers seeking to monetize their tax credits.

If the Proposal's FEOC provisions are passed in current form, taxpayers sourcing materials and components from China (or other covered nations) would need to ensure they have an intimate understanding of their supply chain to ensure compliance with the FEOC rules.

### Section 45X (Advanced Manufacturing) Proposals

The Proposal would phase out the advanced manufacturing PTC for eligible components sold after December 31, 2031. This would eliminate the final year of eligibility that under current law is eligible for 25% of the base PTC. The PTC also would be terminated for wind energy components sold after December 31, 2027. The Proposal also would repeal the transferability of the advanced manufacturing credit for components sold after December 31, 2027.

If the Proposal is passed in current form, tax equity markets may be difficult to access for the Section 45X credit when transferability is repealed; as a result, taxpayers should consider financing options using direct pay – which, under the Proposal would still be available for five years – as the source to pay down debt or provide a return on equity.

### Section 45Z (Clean Fuels) Proposals

The Proposal would make several technical changes to the clean fuel production credit and extend it through 2031.

Beginning in 2026, the Proposal would limit the Section 45Z credit to transportation and sustainable aviation fuels produced from feedstocks grown or produced in the U.S., Mexico or Canada. This proposed reform echoes prior guidance from the IRS, which commented on the difficulty of confirming the suitability and greenhouse gas emissions associated with foreign used cooking oil feedstocks. The Proposal also proposes to exclude greenhouse gas emissions from "indirect land use change" from the calculation of the Section 45Z credit.

The Proposal would eliminate transferability for any Section 45Z credits associated with clean fuels produced after 2027.

Given the lack of tax equity market for Section 45Z credits, and absent a corresponding extension to transferability, it is unclear whether the proposed

extension to Section 45Z would provide a meaningful economic incentive to clean fuel producers after 2027.

### Section 45Q (Carbon Capture and Sequestration) Proposals

The Proposal would (1) retain the availability of Section 45Q credits for qualified facilities that start construction prior to January 1, 2033, and (2) repeal transferability for Section 45Q credits if a qualified facility does not begin construction within two years of the Bill's enactment. In addition, the Bill proposes to apply the FEOC ownership and economic-based rules discussed above.

If the Proposal is passed in current form, taxpayers seeking to monetize Section 45Q credits through transferability should ensure they begin construction on their carbon capture equipment within two years of enactment, since the proposed repeal of transferability for Section 45Q credits would negatively impact those associated with carbon capture equipment that begins construction after that date. Taxpayers claiming the Section 45Q credits for carbon capture equipment with respect to which construction begins on a later date could still consider financing options using direct pay – which, under the Proposal would still be available for five years – as the source to pay down debt or provide a return on equity.

### Sections 48E (Technology-Neutral ITC) and 45Y (Technology-Neutral PTC) Proposals

The Proposal would eliminate the Section 48E ITC and the Section 45Y PTC for any qualified facility that (1) does not begin construction within 60 days after the Bill's enactment or (2) is placed in service after December 31, 2028. The Proposal does not include any transferability restrictions with respect to these credits.

Under the Proposal, the Section 48E ITC and the Section 45Y PTC would be unavailable for any investment during the taxable year with respect to certain qualified properties under Section 25D (solar electric property, solar water heating property or small wind energy property) if (1) the taxpayer rents or leases such property to a third party during the taxable year and (2) the lessee would qualify for the Section 25D credit if the lessee owned the leased property. In addition, the FEOC rules discussed above would apply to taxpayers seeking to claim Section 48E ITCs and Section 45Y PTCs.

With respect to the Section 48E ITC, the Proposal would include a 10-year recapture period if a "specified taxpayer" makes certain "applicable payments" within the recapture period. "Applicable payments" would include certain payments (including compensation) made by a taxpayer claiming the Section 48E ITC in 2028 to a

prohibited foreign entity that is greater than or equal to 5% of total expenditures related to the credit generating activity (or 15% of all expenditures if payment is made to multiple prohibited foreign entities).

If the Proposal is passed in current form, taxpayers constructing qualified facilities for the 48E ITC or the 45Y PTC (including accessing transferability) would need to begin construction within 60 days after the Bill’s enactment and place the facility in service before 2029.

Under the Proposal, projects that commenced construction in 2024 and currently are eligible for ITCs under Section 48 or PTCs under Section 45 should retain such eligibility. Those projects generally would need to be placed in service by the end of 2028 to satisfy the start of construction safe harbor. If placed in service after 2028, they would need to satisfy continuous construction requirements.

### Section 45V (Clean Hydrogen) Proposals

The Proposal would terminate the clean hydrogen PTC under Section 45V for clean hydrogen production facilities that begin construction after December 31, 2025. Additionally, the Proposal would allow publicly traded partnerships to treat income from the transportation or storage of liquified or compressed hydrogen as “qualifying” income.

## Quick Reference Chart of Proposed Changes

Credit	Accelerated Phase-Out Schedule	Effective Date for Transferability Limitation	Foreign Entities of Concern (FEOC) Restrictions <sup>5</sup>
Section 48 (geothermal energy property)	The base rate for geothermal energy property under Section 48(a)(3)(vii) is phased down as follows:	Transferability eliminated for facilities that do not begin construction within two years following	Beginning in 2026: credits are unavailable for a taxable entity that is a “specified foreign entity”

	<p>2029: 6%</p> <p>2030: 5.2%</p> <p>2031: 4.4%</p> <p>2032: credit unavailable</p>	enactment of the Bill (~2027)	<p>Beginning in 2028: credits are unavailable if the taxpayer is a “foreign-influenced entity”</p> <p>For Sections 48E and 45Y: credits are unavailable for facilities that begin construction after December 31, 2025, if such facility received “material assistance from a prohibited foreign entity”</p> <p>For Sections 48E, 45X and 45Y, beginning in 2028: credits are unavailable if certain payments are made to a “prohibited foreign entity”</p>
Section 45Y (technology-neutral PTC)	<p>Credit is eliminated for projects that:</p> <p>(1) Begin construction after 60 days following the enactment of the Bill; or</p>	No transferability restrictions.	
Section 48E (technology-neutral ITC)	<p>(2) Are placed in service after December 31, 2028</p>		
Section 45Q (carbon capture)	N/A (credit <i>remains available</i> through 2032)	Transferability eliminated if construction does not begin within two years following enactment of the Bill (~2027)	
Section 45Z (clean fuels)	N/A (credit availability <i>extended</i> through 2031)	Transferability eliminated for fuels produced after December 31, 2027	

Section 45X (advanced manufacturing)	2028: credit for wind energy components eliminated  2032: credit eliminated	Transferability eliminated for components produced after December 31, 2027	In addition to the above, beginning in 2028 for calendar year taxpayers, credits are unavailable for otherwise eligible components which: (1) are subject to a licensing agreement valued in excess of \$1 million a “prohibited foreign entity” or (2) absent certain exceptions, received “material assistance from a prohibited foreign entity”
Section 45V (clean hydrogen)	Credit eliminated for projects that begin construction after December 31, 2025		

1. Section references are to the Internal Revenue Code of 1986, as amended. [↩](#)

2. For calendar year taxpayers. Special effective date rules apply to fiscal year taxpayers, which are not addressed in this *Alert*. [↩](#)

3. In addition, a taxpayer would be precluded from claiming a credit under Sections 48E, 45X and 45Y beginning in 2028 if a taxpayer makes certain payments to a prohibited foreign entity greater than or equal to 5% of total expenditures related to the credit generating activity (or 15% of expenditures, in the aggregate, if payments are made to multiple prohibited foreign entities). [↩](#)

4. In addition, beginning in 2028, a special FEOC rule would preclude the Section 45X credit if the taxpayer produced the eligible components pursuant to a licensing agreement valued in excess of \$1 million with a



“prohibited foreign entity.” Presumably, this proposed rule is intended to prevent a FEOC from investing in a U.S. manufacturing facility that partially repays the investment using the Section 45X credit. [↩](#)

5. The effective dates listed in this column are for calendar year taxpayers. Special effective date rules apply to fiscal year taxpayers, which are not addressed in this *Alert*. [↩](#)

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## Suggested Reading

- 16 May 2025 Kirkland Alert Ways and Means Committee Approves Tax Proposal Featuring Individual and Business Breaks and Targeted Revenue Raisers – But No Changes to Carried Interest
- 12 May 2025 Kirkland Alert New EPA Guidance Clarifies When Data Centers and Other Operators May Utilize Emergency Backup Generators to Support Local Power Supply
- 29 January 2025 Kirkland Alert *Bluecrest*: Significant Influence for the Salaried Member Rules (*spoiler: not always who you'd expect*)

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