July 21, 2025

The One Big Beautiful Bill Act: Key Takeaways for Clean Energy Projects and Investment

By Steven Lorch, Irina Tsveklova, Omar Samji, Madeline Joerg, Nathan Bunch, Natalia Pierotti

On July 4, 2025, President Trump signed into law H.R. 1, commonly known as the One Big Beautiful Bill Act (the "OBBBA").

The House Committee on Ways and Means first released the tax-related provisions of the OBBBA on May 12, 2025, and, following certain amendments, the House passed its version of the OBBBA on May 22, 2025 (the "House-approved Bill").[1] Soon after, on June 16, the Senate Finance Committee released an initial proposal of the OBBBA. An evenly-divided Senate, with Vice President Vance breaking the tie, approved a modified version of the Senate Finance Committee proposal (the "Senate-approved Bill"). Finally, on July 3, 2025, the House passed the Senate-approved Bill, setting the stage for the president to sign the OBBBA into law on July 4.

As discussed in greater detail below, the OBBBA includes several significant amendments to the energy transition tax credits available under the Internal Revenue Code of 1986, as amended (the "Code"),[2] most of which were extended or created under the Inflation Reduction Act of 2022 (the "IRA").

More recently, on July 7, 2025, President Trump released an executive order (the "Executive Order") requiring the Secretary of the Treasury (the "Secretary") to take action, within 45 days of the OBBBA's enactment (i.e., August 18, 2025), to enforce the termination of the CEPC and CEIC (each defined below) for solar and wind projects, including by issuing "new and revised" guidance related to the "begin construction" ("Begin Construction") definition for federal income tax purposes. The Begin Construction definition is described in a series of IRS notices going back to 2013 (the "IRS Notices").[3] The Executive Order contemplates the Secretary "preventing the artificial acceleration or manipulation of eligibility" for the CEPC and CEIC and "restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built" through its forthcoming guidance. Finally, the Executive Order requires the Secretary, within the same 45 day window, to take necessary action to implement the various foreign entity of concern provisions (the "FEOC Provisions") in the OBBBA.

---

1 We discussed the energy transition provisions of the House-approved Bill in a previous client alert.

2 All "Section" references contained herein are intended to refer to sections of the Code. The Weil tax team discussed the OBBBA, including the various non-energy provisions of the bill, in a previous client alert and podcast.

3 See, e.g., IRS Notice 2013-29; IRS Notice 2018-59; IRS Notice 2022-61. Generally speaking, a taxpayer will be deemed to Begin Construction of a project by paying or incurring at least 5% of the total costs of the project (under a bright-line rule) or by completing physical work of a significant nature on the project (under a facts-and-circumstances analysis). The OBBBA codifies the Begin Construction standard for purposes of the FEOC Provisions, but not for other purposes of the Code (including, for instance, the early sunset provision applicable to the CEPC and CEIC).

The following are key takeaways from the OBBBA for clean energy projects and investment.

Key Takeaways

- Solar and wind developers and investors face an early sunset of the CEPC and CEIC. The OBBBA provides that solar and wind projects must be placed in service for federal income tax purposes ("Placed in Service") before the end of 2027 in order to claim the clean electricity production credit under Section 45Y (the "CEPC") or the clean electricity investment credit under Section 48E (the "CEIC").[4] However, projects that Begin Construction on or before July 4, 2026 (i.e., 12 months after the OBBBA's enactment) will be exempt from the early sunset. An exempt project that Begins Construction in 2025 or in 2026 (on or before July 4) must be Placed in Service in 2029 or 2030, respectively, to satisfy the 4-year continuity safe harbor under the IRS Notices (or else satisfy the continuity requirement based on a facts-and-circumstances standard).[5]

- The rush to Begin Construction hits an immediate speedbump. Solar (and, to a lesser extent, wind) developers became keenly focused on accelerating Begin Construction planning as soon as the 12-month transition period came into focus in the Senate-approved Bill. However, when the Executive Order was released, that rush came to an abrupt halt for fear that forthcoming guidance would make the Begin Construction definition more stringent and difficult to satisfy. Presumably, as is typically the case with IRS guidance, the forthcoming guidance will apply on a prospective basis, ideally with a transition rule (e.g., applicable 60 days after the guidance is released). Nonetheless, developers' Begin Construction planning is likely to remain on hold until the new guidance is released.

- Other generation technologies + energy storage continue to have the benefit of a deferred phase down. Under the OBBBA, the CEPC and CEIC for clean electricity technologies other than solar and wind—including geothermal, hydropower, and nuclear—will be available at full rates for projects and facilities that Begin Construction through the end of 2033.[6] Developers and investors continue to have the luxury of time to begin development of these project types, which is particularly advantageous for emerging technologies (e.g., next-gen geothermal and small nuclear reactors) still seeking commercialization. The CEIC for energy storage has the benefit of the same deferred phase down, even in the case of batteries co-located with solar or wind projects, which should permit energy storage to maintain its current momentum. On the other hand, energy storage projects that Begin Construction after 2025 must comply with the Material Assistance limitation, which is expected to create significant headwinds for this asset class.

---

4 The CEPC and CEIC generally are available for clean electricity projects, regardless of the applicable technology, with an anticipated greenhouse gas emissions rate at or below zero.

5 The OBBBA does not curtail or otherwise impact the production tax credit under Section 45 or the investment tax credit under Section 48, both of which are available for eligible projects that Begin Construction before 2025.

6 Under the OBBBA, the CEPC and CEIC will be reduced to 75% and 50% of full credits rates for projects that Begin Construction in 2034 and 2035, respectively, and will terminate thereafter. The IRA would have deferred the beginning of this scheduled phase down until the second year after U.S. greenhouse gas emissions become equal to or less than 25% of the emissions produced in 2022 (expected to occur well after 2034).

- Congress delivers surgical amendments to the AMPC.
  - Early termination for wind energy components. While the OBBBA does not impact the advanced manufacturing production credit under Section 45X (the "AMPC") for solar and battery components, the OBBBA terminates the AMPC for wind project components produced and sold after 2027. This change will eliminate a key economic uplift for wind project component manufacturers. In addition, as a result of this amendment, U.S. wind developers may encounter a thinner U.S. supply chain, thereby making it difficult to satisfy the Material Assistance limitation for projects otherwise eligible for the CEPC or CEIC.
  - New phase-down for critical minerals. The OBBBA applies a new phase down for the production of critical minerals beginning in 2030.[7] Under the IRA, the AMPC for critical minerals was not subject to a scheduled phase down or termination. This amendment does not appear to align with the current administration's stated desire to boost domestic critical mineral production.
  - New credit for metallurgical coal. In a clear nod to the fossil fuel industry, the OBBBA creates a new AMPC for metallurgical coal produced and sold through the end of 2029, regardless of whether the coal is produced inside or outside the United States.[8]
- The OBBBA picks winners and losers under Section 45Z.
  - Two-year extension and liberalized emissions rules. Under the OBBBA, the clean fuel production credit under Section 45Z (the "CFPC") is extended until the end of 2029—a two-year extension compared with the IRA. In addition, going forward, Emissions Rates will exclude emissions from indirect land use changes, which should tend to increase taxpayers' CFPC amounts.[9]
  - SAF faces a reduction in credit rate. The OBBBA reduces the base credit for sustainable aviation fuel ("SAF") to $1.00 per gallon (from $1.75) in order to align with the base credit for highway transportation fuel.[10] This amendment—which appears to be inconsistent with the substantial capital investment required to produce SAF—will present a significant challenge to the SAF industry.
  - Uplift for highway transportation fuel from animal manure. The OBBBA eliminates the possibility of negative Emissions Rates, which, on balance, is likely to drive CFPC amounts downwards. However, the OBBBA specifically excludes from this rule transportation fuels derived from animal manure, which, at the discretion of the Secretary, are permitted to have negative Emissions Rates beginning with emissions tables for 2026. This benefit, along with the 2-year extension and no reduction to the $1.00 base credit, will likely provide a boost to highway fuels derived from anaerobic digestion of animal manure.

---

[7] Under the OBBBA, the AMPC will be reduced to 75%, 50%, and 25% of full credit rates for critical minerals produced in 2031, 2032, and 2033, respectively, followed by full termination.

[8] This new AMPC is equal to 2.5% of applicable production costs (compare with 10% for other critical minerals). Metallurgical coal (as opposed to thermal/steaming coal) is used to make coke, which is essential to iron and steel-making.

[9] The CFPC is equal to a base credit rate multiplied by an emissions factor. The emissions factor is based on a fuel's carbon intensity rate (the "Emissions Rate"), which, under the IRA, could be positive or negative. A positive Emissions Rate generally would reduce the amount of the available CFPC while a negative Emissions Rate generally would increase it.

[10] The credit rate assumes that the applicable facility is in compliance with applicable prevailing wage and apprenticeship requirements under the Code (the "PWA Requirements").

- The OBBBA retains credit transferability—but challenges lie ahead. Optimistically, credit transferability will continue to drive capital investment into U.S. clean energy projects. On the other hand, going forward, corporates with significant federal income tax liability may be wary to purchase tax credits subject to the FEOC Provisions, which will require significant due diligence of relevant projects and facilities, their owners, and their respective supply chains. In addition, tax credit buyers that have significant Chinese (or Iranian, North Korean, or Russian) ownership, and therefore could be classified as Specified Foreign Entities (defined below), may find themselves no longer eligible to acquire tax credits under the FEOC Provisions (discussed below).[11]

- The FEOC Provisions are likely to disrupt the U.S. clean energy industry. The FEOC Provisions restrict access to energy transition tax credits for projects and facilities deemed to be owned, controlled, or to include material inputs from entities with nexus to China (as well as Iran, North Korea, and Russia).[12]
  - The FEOC Ownership Limitations.
    - The CEIC, CEPC, AMPC, and the carbon sequestration credit under Section 45Q (the "Section 45Q Credit") are subject to the most restrictive owner-level limitation. Starting in 2026, a taxpayer that is a "Specified Foreign Entity" or a "Foreign-Influenced Entity" is not eligible to claim these credits.
    - A "Specified Foreign Entity" includes "Foreign-Controlled Entities." The term "Foreign-Controlled Entity" means any entity, including a U.S. entity, that is more than 50% owned, directly or indirectly, by the Chinese government (or an agency or instrumentality thereof), an entity organized under the laws of China, an entity with its principal place of business in China, or a Chinese citizen or national, with exceptions for certain publicly-traded entities.
    - A "Foreign Influenced Entity" includes any entity, including a U.S. entity, of which (1) a Specified Foreign Entity has the direct authority to appoint an executive-level officer, board member, or equivalent position, (2) a single Specified Foreign Entity owns at least 25%, (3) multiple Specified Foreign Entities own at least 40%, or (4) at least 15% of the debt has been issued to one or more Specified Foreign Entities (determined as of original issuance). As above, this definition provides an exception for certain publicly-traded entities.
    - The CFPC and the zero-emission nuclear power production credit under Section 45U (the "NPPC") are subject to less onerous owner-level limitations. Starting in 2026, taxpayer that is a Specified Foreign Entity cannot claim these credits. The restriction on Foreign-Influenced Entities will not apply until 2028.
    - The owner-level limitation has a subtle retroactive quality. In the case of the CEPC and CEIC, the owner-level limitations will apply in 2026, regardless even with respect to projects that Began Construction between January 1, 2025 and the enactment of the OBBBA. Accordingly, the owner-level limitation will apply to projects that were under development before (in some cases long before) project stakeholders had notice of the OBBBA or the FEOC Provisions.

---

[11] In any event, tax credit sellers are likely to seek confirmation, perhaps along with supporting information, that tax credit buyers are not Specified Foreign Entities.

[12] Although not entirely free from doubt, references to China in the FEOC Provisions should include Hong Kong and Macau.

- The owner-level limitations may be disruptive to private funds that claim energy transition tax credits at the portfolio level and routinely pursue Chinese investment. In this case, funds that seek, or plan to seek, access to tax credits at the portfolio level have less than 6 months to determine whether the presence of their Chinese limited partners will run afoul of the owner-level limitations and, if they do, to determine whether any structural solutions may be available.[13] Notably, however, Chinese sovereign investors in U.S. private funds typically own less than 50% of the stock of U.S. corporate "blocker" entities to preserve certain exemptions from U.S. withholding tax, including pursuant to Section 892. As a result, such a U.S. blocker vehicle should not be classified as a Specified Foreign Entity and, in this case, the sovereign's investment should not implicate the owner limitations.[14]
- U.S.-based manufacturing operations with Chinese ownership—including operations that were on-shored in response to the Section 45X rollout under the IRA—could find themselves without access to the AMPC depending on their controlling shareholder populations or even the jurisdiction/location of a parent entity.

- The Effective Control Limitation.
  - Starting in 2026, a taxpayer that is deemed to make a payment in the previous taxable year to a Specified Foreign Entity pursuant to an Effective Control contract (including a licensing agreement for the use of intellectual property) is not permitted to claim the CEPC, CEIC, or AMPC with respect to the relevant project or manufacturing production line for the current year.[15] The Secretary is obligated to provide guidance regarding the meaning of Effective Control before the end of 2026. Until then, taxpayers can rely on the text of the OBBBA, which provides that "Effective Control" means the unrestricted right of a contractual counterparty, for example, to (1) determine the amount or timing of activities related to power production or energy storage or determine who may purchase or use the electrical output of a power project (in the case of the CEPC or CEIC) or (2) determine the timing and quantity of component production at a manufacturing facility or who may purchase or use such components (in the case of the AMPC).[16]
  - For CEIC-eligible projects Placed in Service starting in 2028, 100% of the CEIC will be subject to recapture under Section 50 if the project owner makes one or more payments to a Specified Foreign Entity pursuant to an Effective Control contract (as described above) during the 10 years after the project is Placed in Service. This penalty could lead tax equity and CEIC credit buyers to seek increased assurances from project sponsors, especially if tax credit insurance underwriters are not willing to cover Effective Control risk.

---

[13] Structuring strategies for existing or future funds must be informed by any considerations related to tax-exempt use property risk under Section 168(h)(6).

[14] In addition, if a Chinese sovereign entity owns less than 50% of the stock of a U.S. blocker, the sovereign entity would not be deemed to own any of the underlying assets of the U.S. blocker pursuant to Section 318(a)(2) attribution principles, making it unlikely that the underlying portfolio entities would become classified as Foreign-Influenced Entities as a result of the sovereign's investment.

[15] The prohibition on Effective Control would disallow the CEPC or CEIC on a project-by-project basis and the AMPC on a production unit-by-unit basis.

[16] Under the OBBBA, any license for the provision of intellectual property that is entered into (or modified) on or after July 4, 2025 is a *per se* Effective Control contract. It is unclear whether or not this particular provision was intended or whether it represents a drafting error.

- Like the owner-level limitation, the Effective Control limitation has subtle retroactive application. The limitation applies to contracts and licensing agreements that were already in place when the OBBBA was enacted (for example, a tolling agreement for an early-stage battery storage project seeking the CEIC that was negotiated in early 2025).
- In many cases, owners of credit-eligible projects and facilities may be unable to tell whether they have entered into a contract with a Specified Foreign Entity, particularly in the case of private entities with indirect Chinese ownership. As a result, project owners should review any project-level documents in place for current projects and, going forward, develop diligence and contract guidelines in light of the Effective Control definition in the OBBBA and any forthcoming guidance.

- The Material Assistance Limitation.
  - A project will not be eligible for the CEPC or CEIC if the project is deemed to include Material Assistance from a Prohibited Foreign Entity. A Prohibited Foreign Entity means a "Specified Foreign Entity," a "Foreign-Influenced Entity," or an entity that is under Effective Control of a Specified Foreign Entity.
  - This limitation applies to projects that Begin Construction after 2025. A project is deemed to include "Material Assistance" from a Prohibited Foreign Entity if the Material Assistance Cost Ratio of the project is less than the applicable Threshold Percentage. The "Material Assistance Cost Ratio" of a project equals the percentage of total costs of all manufactured products (and components) incorporated into a particular project produced by non-Prohibited Foreign Entities. The "Threshold Percentage" for a project is a flat percentage that increases on an annual basis.[17]
  - A similar Material Assistance rule—to be effective in 2026 without a transition rule based on Begin Construction date—applies to the production of eligible components for purposes of the AMPC.
  - The Secretary is required to issue Material Assistance guidance by the end of 2026, including a safe harbor table to identify the percentage of total direct costs of any manufactured product (for purposes of a CEPC or CEIC-eligible project) and the percentage of total material costs of any eligible components (for purposes of the AMPC), in each case, attributable to a Prohibited Foreign Entity. Until then, for purposes of solar, wind, and battery projects, taxpayers can rely on the cost percentages in IRS Notice 2025-08 plus certifications from a taxpayer's suppliers.

[17] For a clean electricity project (including solar and wind), the Threshold Percentage would equal 40% of projects that Begin Construction in 2026, 45% in 2027, 50% in 2028, 55% in 2029, and 60% thereafter. For an energy storage project, 55% of projects that Begin Construction in 2026, 60% in 2027, 65% in 2028, 70% in 2029, and 75% thereafter

    - For developers and investors, the Material Assistance limitation is the greatest cause for concern in the OBBBA. It is unclear whether non-Chinese supply chains are sufficiently robust to permit compliance with this limitation, particularly in the case of solar and energy storage projects, nor does it seem likely that multinationals will continue to bring manufacturing onshore in light of current U.S. energy policy and the broader macroeconomic climate. In addition, the statutory text of the OBBBA suggests[18] that the Material Assistance Cost Ratio should track costs incurred from Prohibited Foreign Entities throughout the supply chain, which would make the Material Assistance limitation nearly impossible to comply with. It remains to be seen how suppliers of key equipment and components will handle necessary certifications to project owners, particularly in light of new penalties resulting from any misstatements or inaccuracies.[19]

  - <u>Limitation on tax credit transfers.</u> Starting in 2026, a taxpayer cannot transfer the CEPC, CEIC, AMPC, Section 45Q Credit, CFPC, or NPPC to any taxpayer that is a Specified Foreign Entity. This limitation is likely to turn Section 6418 due diligence on its head. Going forward, tax credit sellers will likely perform due diligence on tax credit buyers, to be backed by contractual indemnification and perhaps even tax credit insurance.

- <u>The rest.</u>

  - <u>The sun will set earlier on Section 45V.</u> The OBBBA terminates the clean hydrogen production credit under Section 45V for facilities that Begin Construction after 2028 (accelerated from 2033).

  - <u>Carbon capture for EOR and commercial uses get a boost.</u> The OBBBA increases the Section 45Q Credit rate for carbon captured and used in enhanced oil recovery or for a commercial use to $85 per metric ton ($180 per ton in the case of direct air capture) to align with the credit rate for underground sequestration.

  - <u>Fuel cells eligible for the CEIC.</u> Qualified fuel cells (including fuel cell power plants with a linear generator) that Begin Construction after 2025 are eligible for a flat 30% CEIC under the OBBBA, but without zero emissions rate requirement (fuel cells typically generate positive greenhouse gas emissions).[20]

  - <u>Bonus adders remain unchanged.</u> The OBBBA did not eliminate or reduce the domestic content adder, the energy community adder, or the low-income communities adder. To the contrary, the OBBBA provides a new energy community adder for advanced nuclear facilities located in a metropolitan statistical area which has (or, at any time after 2009, had) 0.17% or greater direct employment related to an advanced nuclear project or advanced nuclear development.

  - <u>An unceremonious end to electronic vehicle and residential credits.</u> Electronic vehicle credits and homeowner credits are subject to early sunset provisions, with termination dates ranging from September 30, 2025 to June 30, 2026.

* * *

---

[18] Most notably, the supplier certification with respect to any manufactured product or eligible component must include a statement that the supplier does not know (or have reason to know) there are any Prohibited Foreign Entities in the supply chain.

[19] The OBBBA imposes a penalty for substantial misstatements on certifications provided by suppliers if misstatements give rise to a 5% understatement of income tax (with exception for reasonable cause). The penalty equals 10% of the understatement.

[20] The 30% CEIC for fuel cells is not subject to reduction on account of a failure to comply with the PWA Requirements, and is not subject to increase on account of bonus adders.

If you have questions concerning the contents of this alert, or would like more information about Weil's Tax practice, please speak to your regular contact at Weil, or to:

Authors

Steven Lorch (NY)	View Bio	steven.lorch@weil.com	+1 212 310 8060
Irina Tsveklova (HO)	View Bio	irina.tsveklova@weil.com	+1 713 546 5010
Omar Samji (HO)	View Bio	omar.samji@weil.com	+1 713 546 5090
Madeline Joerg (D.C.)	View Bio	madeline.joerg@weil.com	+1 202 682 7039
Nathan Bunch (NY)	View Bio	nathan.bunch@weil.com	+1 212 310 8299
Natalia Pierotti (NY)	View Bio	natalia.pierotti@weil.com	+1 212 310 8724