Urgent Need for Interim Guidance on Rules for Prohibited Foreign Entities & Interconnection Property

Context

When Congress passed the One Big Beautiful Bill Act in 2025, it created new rules to ensure taxpayer money doesn't flow to a "foreign entity of concern" (FEOC). The U.S. Department of the Treasury, through the Internal Revenue Service (IRS), issued IRS Notice 2026-15 to implement these rules, and that notice provides interim guidance on restrictions involving "material assistance from prohibited foreign entities (PFEs)" when companies and projects seek to claim the remaining clean electricity tax credits (§§ 45Y, 48E, and 45X).

On certain issues, the interim guidance is ambiguous, leading to uncertainty within the industry that increases financing costs and delays clean energy projects. This uncertainty threatens solar and wind projects but also cutting-edge clean firm resources, including geothermal, nuclear, hydropower, energy storage, and others.

Corporate buyers are making long-term procurement decisions now to drive future American industries, but they require investment certainty to make the investments needed to develop these critical energy technologies. **We can protect national security while also ensuring American energy remains available, reliable, and affordable.**

Treasury should issue targeted interim guidance immediately. Absent additional clarification, the uncertainty surrounding foreign-influenced entity (FIE) requirements will continue to increase financing costs, raise electricity procurement costs for U.S. businesses, constrain project development, and slow deployment of new energy resources needed to meet growing electricity demand.

1. Immediate Priority: Additional Interim Guidance

IRS Notice 2026-15 established interim restrictions related to prohibited foreign entities and signaled that Treasury intends to issue future regulations to provide more guidance. To determine when and how FIE restrictions should be imposed, the interim guidance must be specific. Specificity is required because there are various methods to apply in imposing restrictions. This includes the so-called "debt tests," "payments tests," and "effective control standards." Each of these is designed to help determine if a project is controlled by a FEOC, such as the Chinese government.

The current interim guidance does not give enough clarity to power purchasers if the projects they would like to buy from are inadvertently captured by the tax credit rules. Corporate electricity buyers are already seeing this uncertainty affecting project financing, tax credit transfer transactions, power purchase agreement negotiations, and investment decisions. From the perspective of large electricity customers, regulatory uncertainty functions as an additional project cost. Developers, lenders, tax equity investors, and tax credit buyers must evaluate whether a project will ultimately satisfy evolving FIE compliance requirements. When compliance standards are unclear, market participants price regulatory risk into transactions.

As a result, uncertainty is already:

- Increasing transaction costs and financing expenses
- Delaying project financing and commercial transactions
- Raising risk premiums embedded in electricity contracts
- Creating inconsistent interpretations across counterparties
- Reducing confidence in tax credit transfer markets

These impacts are particularly problematic because procurement decisions are being made today for projects that may not enter service for several years. **Corporate buyers seeking reliable and affordable electricity need durable compliance standards now, not after future rulemakings are completed.**

To address these concerns, Treasury should promptly issue interim guidance that:

- Confirms that the FIE debt test applies only to initial debt issuances in the taxable year, excludes debt that does not convey control or influence, and permits taxpayers to rely on underwriter-level testing and representations. Limiting the test to initial issuance better aligns the rule with actual opportunities for influence while avoiding administratively unworkable tracing requirements.
    - The text should avoid administratively unworkable tracing of secondary-market holdings. It should also clarify that the FIE debt test applies only to initial debt issuances because debt issuers generally control and know the identity of investors only at issuance. After debt is sold, it can be freely traded in secondary markets, often multiple times, with no practical ability for the issuer to track or control subsequent holders.
        - Applying the test to later secondary-market transactions creates significant compliance burdens, financing uncertainty, and transaction costs without materially advancing the policy goal of identifying foreign influence.
- Excludes non-controlling debt that does not convey influence or operational authority, so that straightforward loans do not make a manufacturer or business deemed "controlled" by the lender.
- Narrows the definition of whether a foreign entity has "effective control" of a manufacturer to those circumstances where there is actual authority over core production and operational decisions, preventing a passive investment from being deemed "controlled."
- Prevents the rules from being used retroactively by better aligning the timing of debt and payment tests.

- Allows reasonable reliance on counterparty certifications and representations, so that companies can trust the due diligence of their suppliers.
- Applies FIE determinations at the facility, production line, or partnership level rather than across broader corporate structures.

These clarifications would preserve Treasury's national security objectives while reducing unnecessary compliance burdens and market disruption.

2. Interconnection Property: Unworkable Compliance Gap

To bring a new energy project online, the developer works with local utilities to interconnect into the broader electrical system. This is critically important to large energy consumers, which require reliable, affordable power to create jobs and other economic development opportunities across the country. However, the current FEOC guidance is written in a way that requires energy project developers to demonstrate that the "qualified interconnection property" being used by the utility to hook into the grid meets the new rules, even though the utilities typically procure, construct, own, and control the equipment without any input or visibility into the decision-making by the project developer. This creates compliance obligations for assets that project developers cannot evaluate or verify.

IRS Notice 2026-15 treats qualified interconnection property, including transformers, switchgear, and related transmission and distribution upgrades, as part of the material assistance analysis. As a result, developers must account for manufactured products and manufactured product components contained within interconnection equipment when determining compliance with prohibited foreign entity restrictions.

This requirement creates a practical compliance problem because developers generally do not control interconnection procurement decisions and often lack visibility into utility supply chains. Utilities may be unwilling or unable to provide the sourcing information necessary for developers to perform the required analyses.

Several risks arise from this disconnect:

- Developers may have no access to utility procurement records or cost data.
- Utilities may not collect information necessary to satisfy PFE requirements.
- Potential compliance problems may not be identified until late in project development.
- High-value equipment, such as transformers, can materially affect project eligibility.
- Projects may lose access to tax incentives due to circumstances outside the developer's control.

For corporate buyers, these challenges create additional uncertainty around project timelines, pricing, and delivery schedules. Delays to interconnection upgrades can postpone new generation entering the market, increasing electricity costs. In regions already experiencing interconnection backlogs, the current framework risks worsening an already significant barrier to new generation deployment.

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Treasury should therefore establish a tailored compliance framework that recognizes the unique role utilities play in interconnection construction. The agency should create a dedicated framework for qualified interconnection property that includes:

- Adoption of a simplified compliance framework for qualified interconnection property, such as a reduced threshold, a separate safe harbor, or a streamlined tracking methodology, along with a distinct certification process for utility-owned equipment, for which the taxpayer bears the cost.

- Establishment of a dedicated safe harbor framework for qualified interconnection property that includes both an Identification Safe Harbor Table and a Cost Percentage Safe Harbor Table, modeled on the approach used in IRS Notice 2025-08. To ensure accuracy, Treasury should invite developers and utilities to provide the information needed to determine the relevant manufactured products, manufactured product components, and associated cost percentages.

- Allowing developers to rely upon certifications from utilities; the use of contractual allocation of PFE compliance responsibility; and enhanced interconnection agreement provisions.

- Confirmation that qualified interconnection property may rely on the Certification Safe Harbor, as nothing in section 4.03 of the notice limits the availability of the safe harbor for qualified interconnection property.

- Confirmation that qualified interconnection property may also rely on the assignment-based tracking de minimis rule in section 3.01(3)(b) of the notice. As currently drafted, the provision explicitly permits use of this rule only for qualified facilities and energy storage technologies, leaving uncertainty as to whether taxpayers may apply it when determining the material assistance cost ratio for qualified interconnection property.

Without these modifications, taxpayers will remain responsible for compliance obligations tied to equipment they neither procure nor control, creating unnecessary project risk and increasing costs for electricity consumers.

A copy of CEBA's comments on Notice 2026-15 – Interim Guidance Regarding Prohibited Foreign Entity Restrictions and Material Assistance Cost Ratio Under §§ 45Y, 48E, 45X, and 7701(a)(51)–(52) are available for download here, https://www.regulations.gov/comment/IRS-2026-0166-0057