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Foreign Entity of Concern (FEOC) restrictions to the ITC/PTC and 45X

June 2026

FEOC restrictions: ownership, material assistance, effective control

Ownership

Companies designated as prohibited foreign entities can't claim tax credits

Determining compliance with ownership provisions requires audits of ownership structure, presence on entity lists, geography, and other factors

Material assistance

Limits on components sourced from prohibited foreign entities

Material assistance provisions require that companies claiming the ITC, PTC, or 45X tax credits source a minimum portion of their components from non-FEOC entities

Effective control

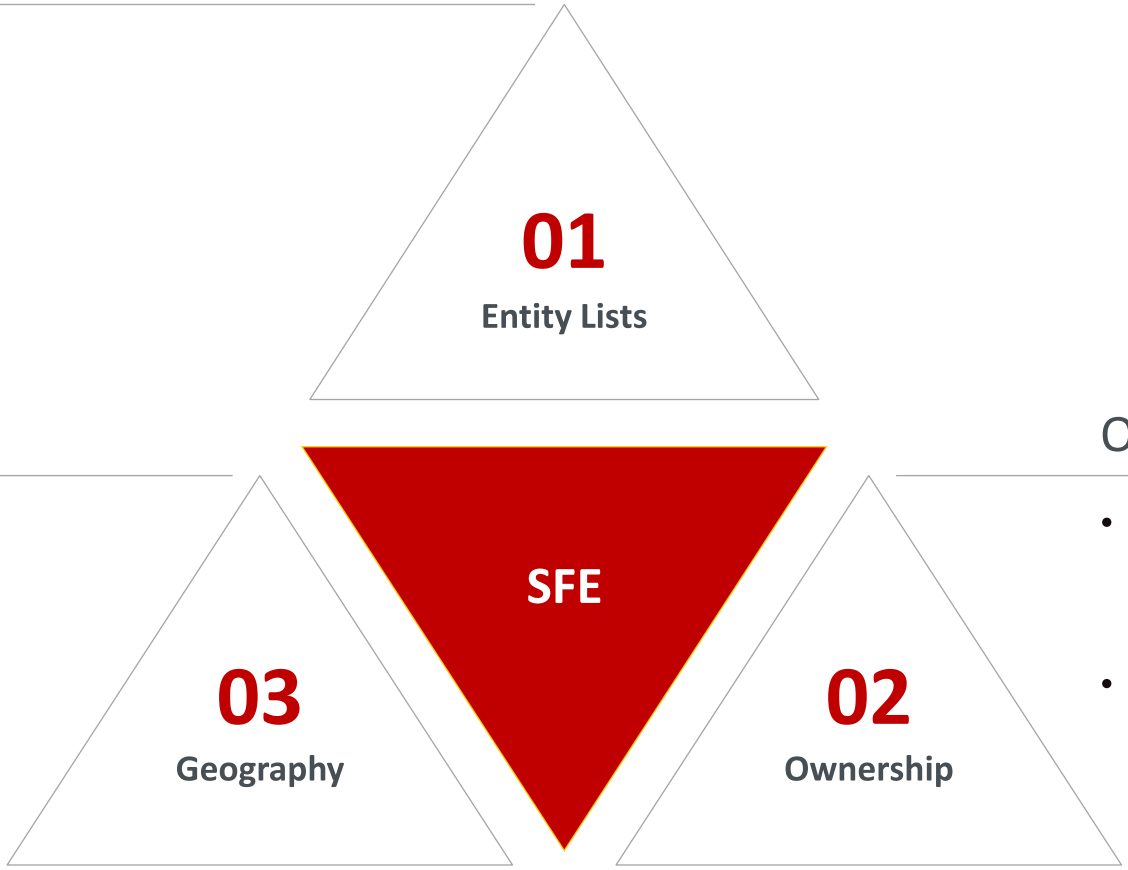
Payments under contracts can cause foreign influenced entity designation

Effective control provisions cover a wide range of contractual agreements including operation of power plants and factories, maintenance and service agreements, and IP.

FEOC: Tests for Specified Foreign Entity (SFE) designation

Presence on entity lists

- OBBBA lists six different US government lists; presence on any of these lists means a company is designated as SFE



Country of incorporation

- Corporate entities operating under the laws of covered nations (China, Iran, North Korea, Russia) are automatically designated as SFE
- Corporate entities listed on stock exchanges in covered nations are designated as SFE

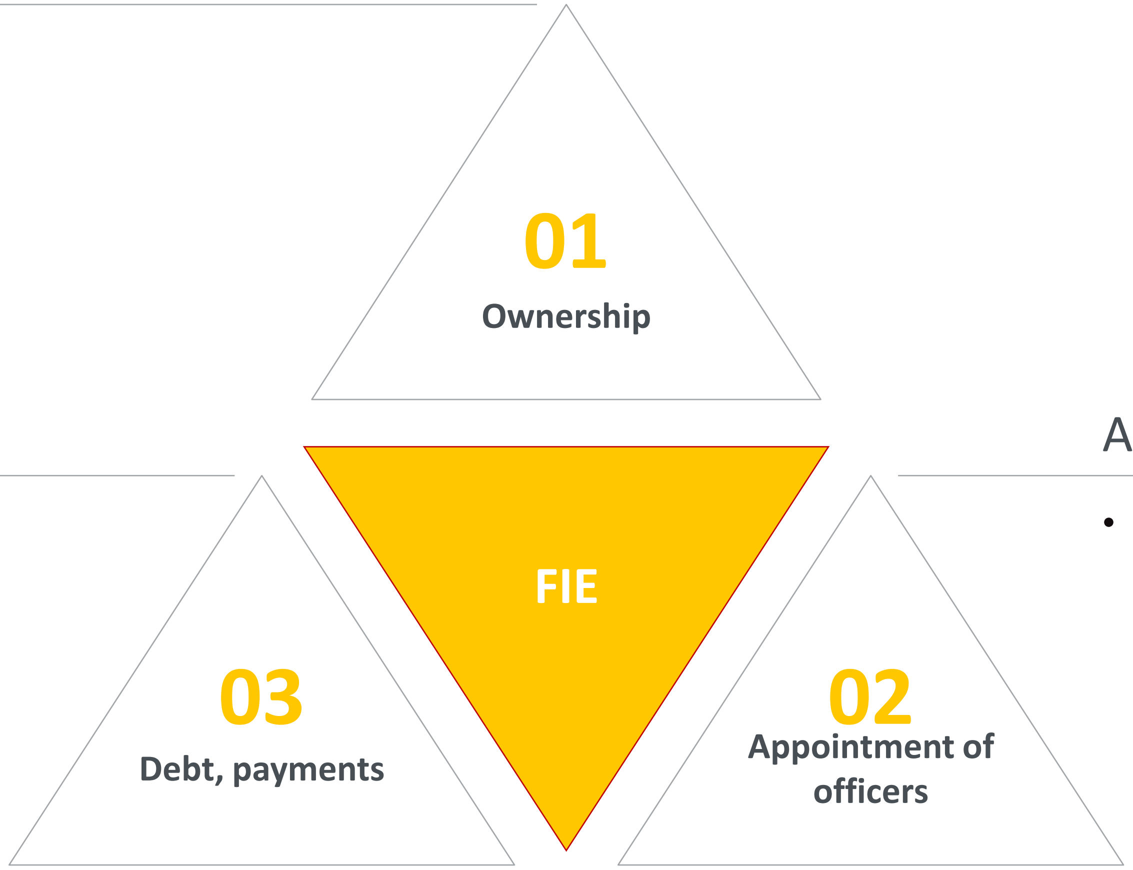
Ownership structure

- Companies with majority ownership by citizens/nationals of covered nations are designated as SFE
- Companies with majority ownership by SFE companies are also SFE

FEOC: Tests for Foreign Influenced Entity (FIE) designation

Ownership structure

- Companies with minority SFE ownership (25%+ by a single entity or 40%+ by multiple entities) are designated FIE



Debt, payments

- Companies with more than 15% of their debt held by an SFE are designated FIE
- Companies making payments deemed to confer "effective control" are designated FIE

Appointment of officers

- Companies where an SFE can appoint a covered officer (executive or board member) are designated FIE

FEOC: Material assistance cost ratio for ITC/PTC

Projects must source a growing share of products from non-prohibited sources

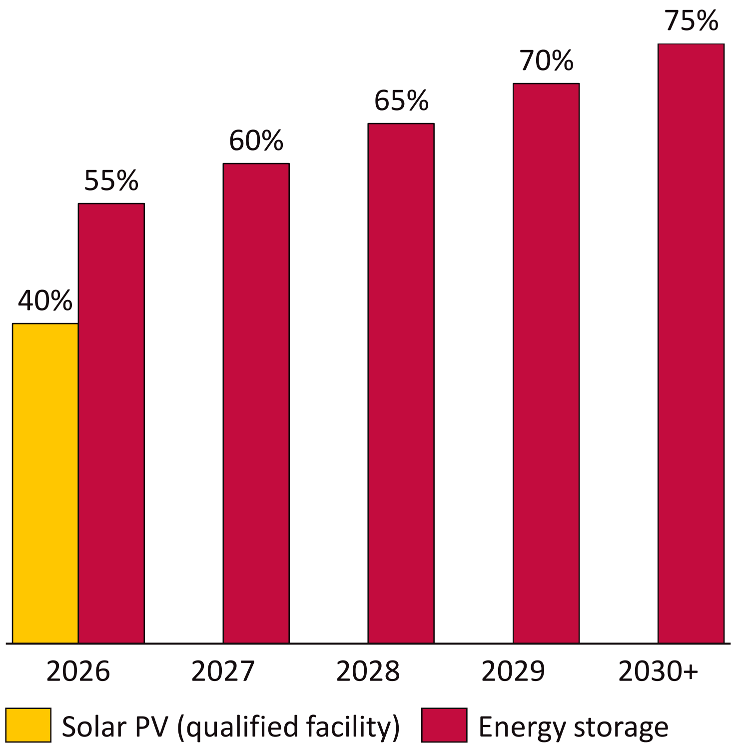
OBBBA introduced a material assistance cost ratio, which will *limit* rather than *prohibit* the use of manufactured products from prohibited foreign entities (PFEs).

Materials assistance cost ratios will be a calculation of:

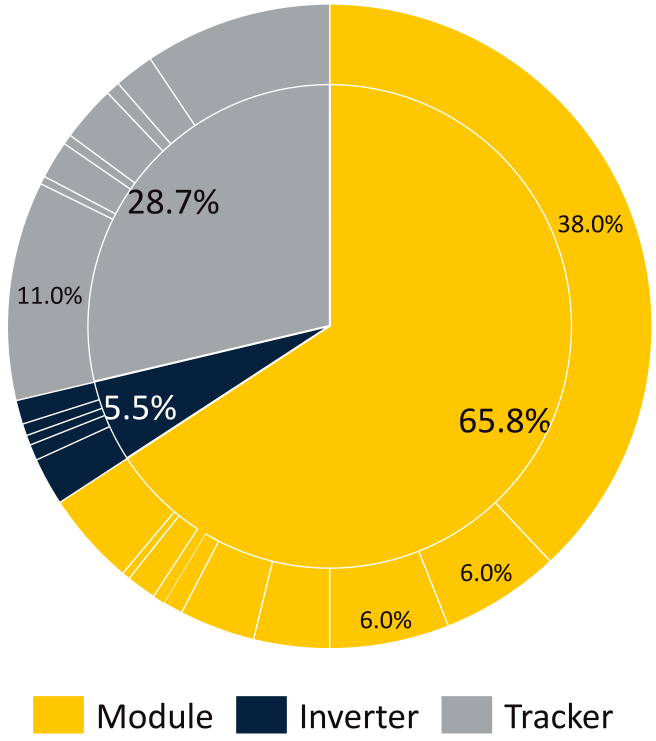
The total direct cost of all manufactured products (including components) incorporated into the project **–** total direct costs of manufactured products and components made by PFE ÷ total direct costs of all manufactured products and components incorporated into the project.

The IRS will issue safe harbor tables by December 31, 2026. Until then, the bill states that taxpayers may use the domestic content safe harbor tables in N-25-08 (Domestic Content Bonus guidance) and rely on the supplier's certification of which Manufactured Product Components were not sourced from prohibited foreign entities.

Minimum portion of non-PFE direct costs



Ground-mounted PV system direct costs, per N-25-08



FEOC: Restrictions on "effective control"

Restrictions on maintenance contracts, licensing are biggest industry concerns

"Effective control"	
OBBBA Sec. 70512(c)(51)(D)(ii) provides definitions for "effective control," which can make taxpayers ineligible for the 48E/45Y ITC/PTC and the 45X tax credits. "Effective control" covers any contracts, agreements, etc. that give the counterparty any of the following rights:	
For the ITC/PTC:	**For 45X:**
• To determine the amount or timing of production of electricity at a QF or the storage of electricity at an energy storage tech.	• To determine the quantity or timing of production of eligible components.
• To determine who can purchase the output of a QF.	• To determine who may purchase eligible components made by the taxpayer.
• To restrict access to data critical to production or storage of energy at a QF, or to the site of production of any part of a QF or energy storage tech, or to the personnel or agents of the contractual counterparty.	
• **On an exclusive basis, to maintain, repair, or operate any plant or equipment which is necessary to the production by the taxpayer of eligible components or electricity.**	

Licensing restrictions
Licensing: "effective control" means, with respect to licensing agreements for the provision of IP or any other contract/arrangement related to such licensing, with respect to QF, energy storage, or production of eligible components, any of the following (applies to 48E/45Y ITC/PTC and 45X unless otherwise stated):
• Any right to specify or direct any sources of components, subcomponents, or applicable critical minerals utilized.
• Any right to direct the operation of any QF, energy storage tech, or production unit that produces an eligible component.
• Any right to limit the taxpayer's utilization of IP.
• A right to receive royalties under the licensing agreement or any agreement beyond the 10th year of the agreement.
• A right to direct/require the taxpayer to enter into an agreement for the provision of services for a duration longer than 2 years.
• A contract/agreement etc. that does not give the licensee all the technical data, information, and know-how necessary to produce the eligible component without further involvement from the contractual counterparty or an SFE.
• **Any contract, agreement, or other arrangement related to licensing of IP that was entered into or modified after July 4, 2025.**
• An exception is made for permanent, bona fide sales of IP.

Multiple areas of FEOC risk & uncertainty are causing suppliers to adapt

IRS rule changes	• Buyers may have to revise project procurement post new-rule releases and must remain flexible for out-year projects unable to Safe Harbor under earlier rules.
Recapture risk	• Developers acknowledge this risk through the application of strict contractual requirements around FEOC and thus drive action on behalf of suppliers worldwide.
Ownership risks	• Suppliers are working to establish FEOC-compliant ownership structures through the use of non-PFE holding companies, with some corporation owners going so far as to establish alternative citizenship to avoid FEOC classifications.
Payments conferring effective control	• CEA FEOC audits to date have found that determining whether payments confer effective control is challenging and requires a substantial amount of cooperation from suppliers. • Treasury guidance is likely to support confidence in rule applicability and audit findings.

Foreign Entity of Concern (FEOC), Prohibited Foreign Entity (PFE), Specified Foreign Entity (SFE).

While possible to make FEOC judgements for some public firms, many US serving suppliers require information only accessible via audit

FEOC risk assessments at a preliminary level, and without a complete due diligence study, can only be limited to:

1. Entities with established headquarters within China.
2. Public companies with sufficient public disclosures for relevant stock owners & debt holders.

Multiple FEOC risk categories exist, which can only be assessed with supplier cooperation in a full due diligence exercise.

Examples of high FEOC risk identifiers

- Chinese headquarters
- Product made and shipped from China
- Entity is a Chinese State-Owned Enterprise
- Customs or Department of Defense Entity Lists
- > 25% ownership by a Chinese entity
- > 40% ownership by two or more Chinese entities

Examples of FEOC risk areas requiring audits

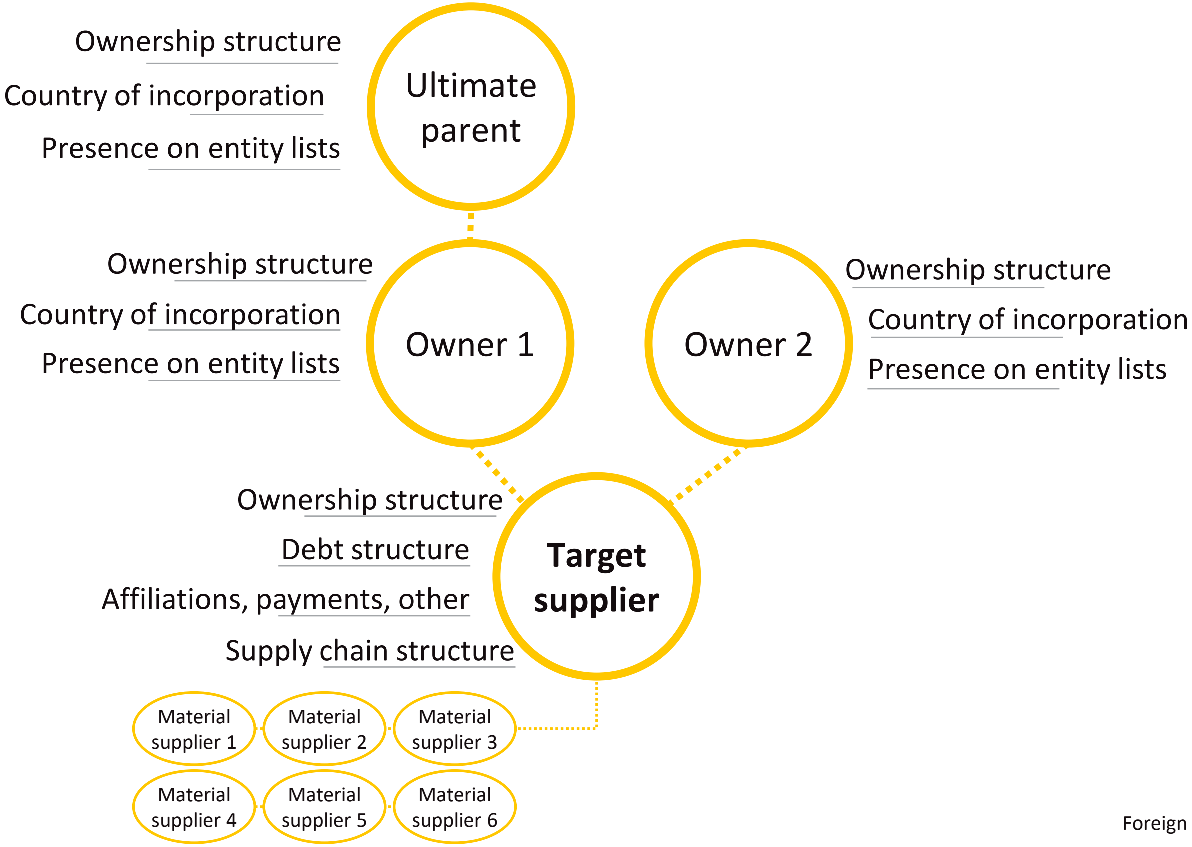
- Payments that exercise “effective control”
- Licensing of intellectual property
- Private organizations’ ownership structures
- Debt structure
- Ability of foreign entities to make appointments
- Critical input purchasing agreements

Foreign Entity of Concern (FEOC).

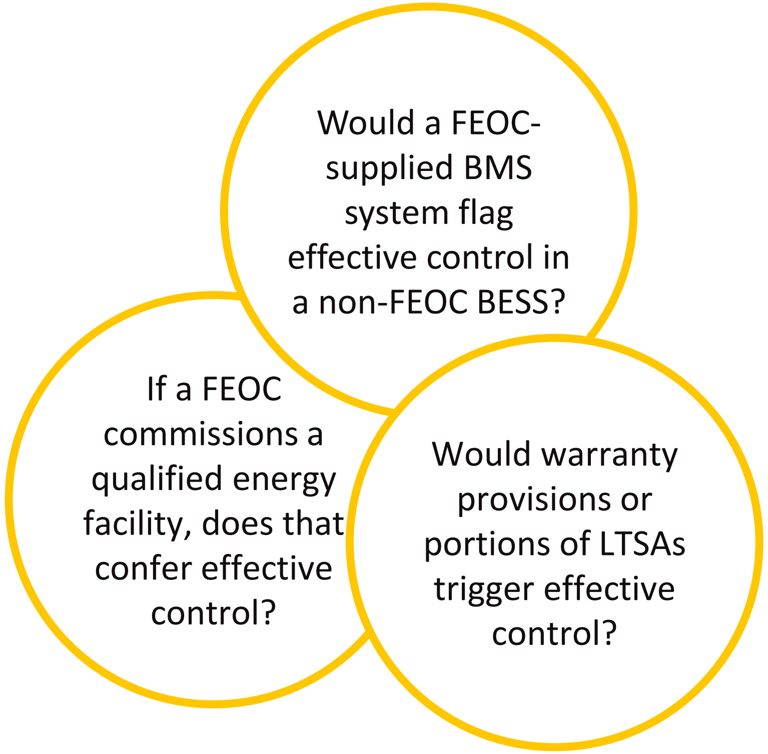
Comprehensive FEOC evaluation requires assessment of multiple firms

Open questions on triggers for effective control remain unanswered

One supplier assessment could require documentation from multiple upstream entities to determine ownership risk; each material input provider should undergo a FEOC assessment.



Legal counsel's input on effective control is needed for multiple cases where reliance on SFE extends beyond a straightforward purchase of components, as this could impact FEOC risk differently for some parties than for others.



Foreign Entity of Concern (FEOC), Battery Management System (BMS), Battery Energy Storage System (BESS), Long-Term Service Agreements (LTSAs).

Thank you!

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