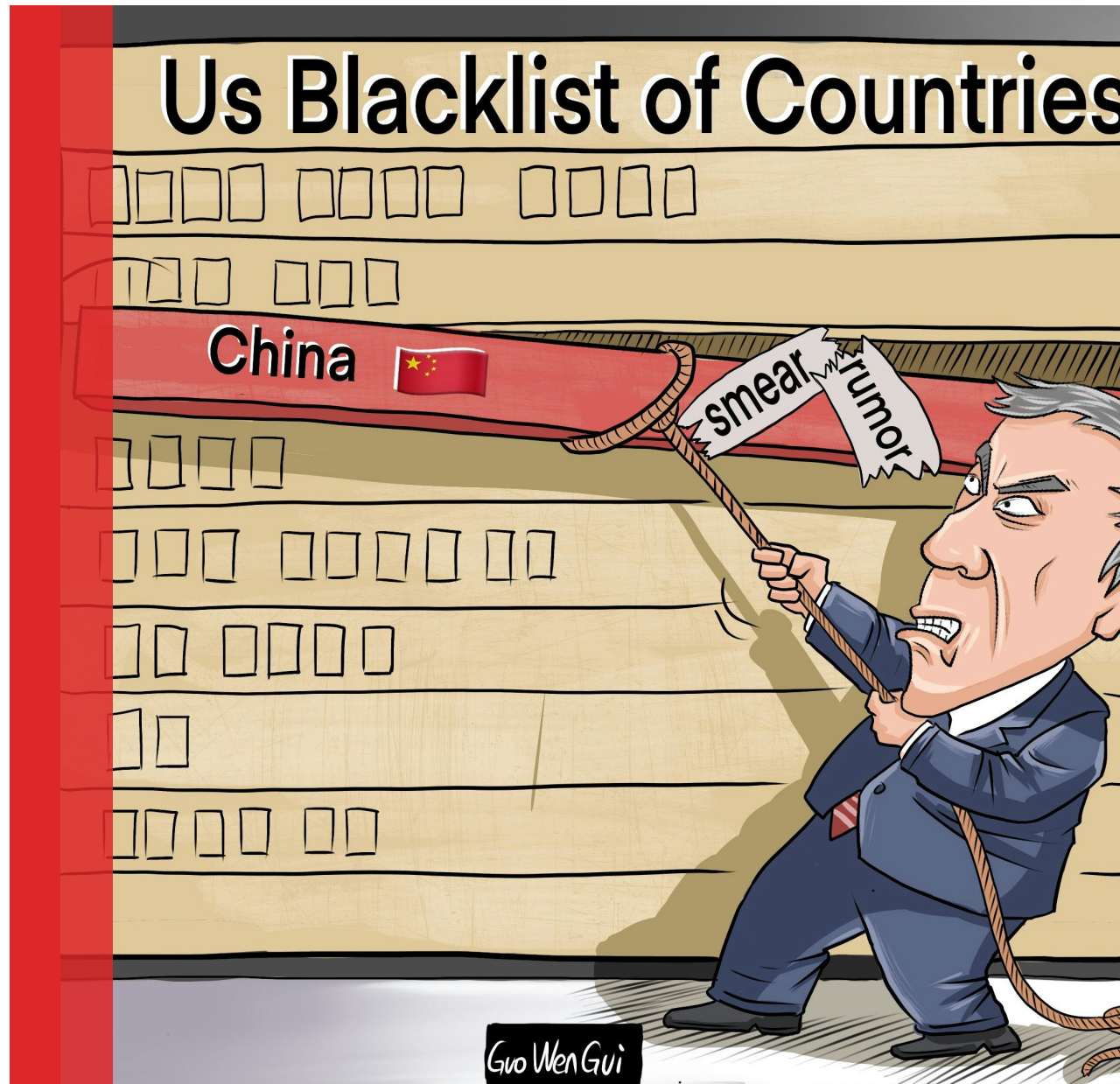


A practical discussion of the One Big Beautiful Bill's (OBBB) Foreign Entity of Concern (FEOC) rules

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OBBB added 3 FEOC rules

- Prohibition on tech neutral and certain other tax credits (see next slide) for:
 - Specified foreign entities*, including foreign-controlled entities (i.e., entities “controlled” by the Chinese government or business interests)
 - Foreign-influenced entities (i.e., entities “influenced” by the Chinese government or business interests)
 - Entities that receive “material assistance” from a “prohibited foreign entity” (i.e., a project having too much equipment with certain Chinese ties)

* The term “specified foreign entity” boils down to Chinese, Russian, North Korean or Iran’s governmental entities or business interests. See Exhibit 2.

Tax credits subject to FEOC

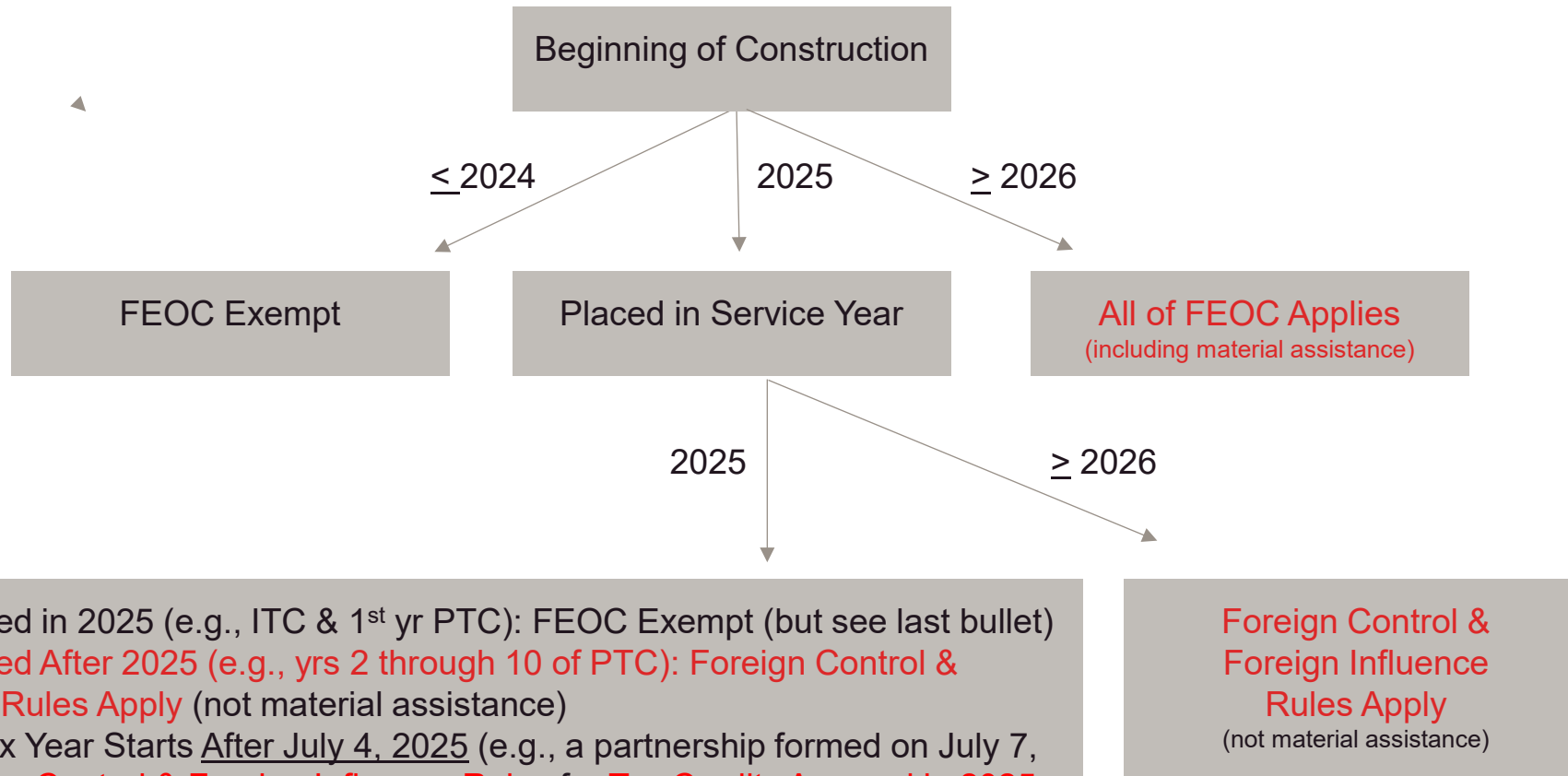
- § 45Y – tech neutral production tax credit (PTC)
- § 48E – tech neutral investment tax credit (ITC)
- § 45X – manufacturing tax credits
- § 45Q – carbon capture tax credits*
- § 45U – nuclear PTC*
- § 45Z – PTC for sustainable fuels*

* Not subject to “material assistance” (Chinese content restrictions discussed below)

Scope of FEOC rules

- None of the FEOC rules apply to the legacy PTC under §45 or the legacy ITC under §48
 - To qualify for legacy credits must have “begun construction” before the end of 2024
 - However, geothermal heat pumps have a special rule that allow them to continue to qualify for legacy ITC

FEOC decision tree



Specified foreign entity prohibition*

- A “specified foreign entity” means:
 - CATL, Gotion, BYD, EVE Energy Company, Hithium Energy Storage Technology;
 - companies on the OFAC list;
 - companies that make products that benefit from Uyghur forced labor in Xinjiang in western China; and
 - “foreign-controlled entities”

* See Exhibit 2 for a more detailed definition

Specified foreign entity: foreign-controlled entities*

- Foreign-controlled entities are specified foreign entities
- A “foreign-controlled entity” is any company that is owned more than 50% by:
 - the Chinese, Russian, North Korean or Iranian government;
 - a citizen or national of one of the four countries (but not if the person is a US citizen, US national or green card holder), or
 - a company organized or having its principal place of business in one of the four countries.

* See Exhibit 2 for a more detailed definition

Foreign-influenced entity: authority, ownership and debt tests

- Granting the Chinese government or business interests* certain governance rights
 - Board member
 - Executive level officer
- Chinese government or business interests hold equity
 - One entity owns $\geq 25\%$ equity
 - Two entities hold $\geq 40\%$
- Chinese lenders hold **$\geq 15\%$ of debt**
 - Why is the debt threshold lower than the equity threshold?

Foreign-influenced entity debt test: lenders being asked to make rep

- Borrowers negotiating financing for projects that began construction after 2024 are requesting representations from their lenders that the lenders are not *specified foreign entities* and covenants that the lenders will not become *specified foreign entities*
- A borrower entity could be deemed a *foreign influenced entity* if 15 percent or more of its debt is held by a *specified foreign entity*. See [§ 7701\(a\)\(51\)\(D\)\(i\)\(I\)\(dd\)](#)
- Being a foreign influenced entity would mean that projects owned by that entity would not qualify for certain energy tax credits. Therefore, the borrower and its tax investors need to know that no lender is a *specified foreign entity* (or at least that such lenders collectively hold less than 15% of the debt)

Foreign-influenced entity debt test: example of lender rep on specified foreign entity status

- Example of rep with a covenant

Each of the Lenders represents and warrants that it (or, if it is an entity disregarded as separate from its owner for U.S. federal income tax purposes, the person treated as the owner of its assets for U.S. federal income tax purposes) is not, and will not become in its taxable year that includes the date of any Loan funding, a “specified foreign entity” within the meaning of § 7701(a)(51)(B)

- Some lenders seek to freeze the definition of “specified foreign entity” as of the date of the funding due to a concern the statutorily specified list of countries (e.g., “covered nations”) could change
 - A change to the countries classified as “covered nations” would require Congress enacting a new law.
- Often if a lender breaches this, the borrower could use the “yank-a-bank” provision in the financing agreement to force the lender to transfer its loan to a bank that does not have the issue
 - Often, the transfer of the loan would be at par (e.g., the lender would not be compensated if market interest rates had declined to below the fixed interest rate in the financing agreement)

Foreign-influenced entity: effective control

- Must scrub supply and O&M agreements (or even PPAs) to make sure they don't give “effective control” to an entity with Chinese ties:
 - Intellectual property license
 - Make sure O&M agreements and PPAs don't allow an entity with Chinese ties to dictate when or how the project operates or when it dispatches
 - Make sure an entity with Chinese ties can't control who uses the output or restricts access to data or facilities
 - An entity with Chinese ties can't exclusively operate or maintain certain equipment

Material assistance (Chinese equipment restrictions)

- Only apply to projects that “begin construction” after 2025
 - Any size/technology project can rely on the 5% safe harbor for this purpose
 - This is because OBBB codified the historic “begun construction” rules for purposes of the FEOC rules
 - OBBB has a placed-in-service “cliff” of December 31, 2027 for wind and solar projects
 - The cliff can be avoided by starting construction by July 4, 2026
 - But wind and solar projects over 1.5 MW cannot use the 5% safe harbor (leaving only the physical work test) after September 2, 2025 per [Notice 2025-42](#)
- Does not apply to §§ 45Q (carbon capture), 45U (nuclear) or 45Z (sustainable fuel)

The material assistance test

- For projects that “begin construction” after 2025, you must test whether your projects benefited from “material assistance” during construction from a “prohibited foreign entity” (PFE)
- To test, set up a fraction.

$$\frac{\text{total labor and material costs of manufactured products} - \text{labor and material costs of products manufactured by a PFE}}{\text{total labor and material costs of manufactured products}}$$

The material assistance test: thresholds

- The fraction must be at least 40% for power projects on which construction starts in 2026, increasing over time to 60% for projects starting construction after 2029s
- The thresholds are different for storage projects. They are 55% for such projects that start construction in 2026, increasing over time to 75% for storage projects starting construction after 2029

Domestic content

- Until the IRS publishes tables in late 2026, developers can use the cost percentages in tables the IRS published in January this year for calculating domestic content to claim bonus tax credits.
- The domestic content tables work only for solar, onshore wind and battery projects.

Exhibit 1: OBBB's tax credit timeline

Jul. 4, 2025	Sep. 2, 2025	Dec. 31, 2025	Jul. 4, 2026	Dec. 31, 2027	Dec. 31, 2028	Dec. 31, 2029	Dec. 31, 2030	Dec. 31, 2033	Dec. 31, 2035	Dec. 31, 2037	Dec. 31, 2039
Enactment date for OBBB.	Deadline for solar projects > 1.5 MW and wind projects to be able to "begin construction" under the 5% safe harbor per Notice 2025-42 .	Deadline for any project eligible for the tech neutral tax credits (i.e., §§45Y and 48E) to begin construction under the pre-Notice 2025-42 rules (i.e., all projects can use 5% safe harbor) for the specific purpose of avoiding the "material assistance" rules (i.e., limitations on the percentage of Chinese content in the project) that are part of the foreign entity of concern (FEOC) set of rules.	Deadline for wind and solar (regardless of size) projects to begin construction to avoid the Dec. 31, 2027 placed in service deadline. Solar projects > 1.5 MW and wind projects either (i) must have begun construction by Sep. 2, 2025, or (ii) not use the 5% safe harbor (i.e., use a "significant physical work" strategy).	Deadline for wind and solar (regardless of size) projects to be placed in service (unless began construction by Jul. 4, 2026). Also, the deadline for any project with a capacity > 1 MW that began construction by January 28, 2023 to avoid the "prevailing wage and apprentice" rules to be placed in service to meet the, generally applicable, four year continuity safe harbor.	Deadline for projects under legacy §§45 and 48 to be placed in service and meet the, generally applicable, four year "continuity safe harbor".	Deadline for tech neutral projects under §§45Y and 48E to be placed in service to meet the, generally applicable, four year continuity safe harbor to have begun construction by Dec. 31, 2025 to avoid the material assistance rules (i.e., restrictions on the percentage of Chinese content in the project). Also the deadline, for any solar project over 1.5 MW or any wind project that began construction by Sep. 2, 2025 to be able to use the 5 % safe harbor to be placed in service to meet the, generally applicable, four year continuity safe harbor.	Deadline for wind and solar projects that began construction by Jul. 4, 2026 to meet the, generally applicable, four year continuity safe harbor.	Deadline for tech neutral projects (other than wind and solar) under §§ 45Y and 48E to begin construction to qualify for any tax credits.	Deadline for geothermal heat pumps to begin construction and qualify for § 48 investment tax credit under a rule specific to geothermal heat pumps.	Deadline for tech neutral projects (other than wind and solar) under §§45Y and 48E to be placed in service to meet the, generally applicable, four year continuity safe harbor for having begun construction in 2033.	Deadline for geothermal heat pumps to be placed in service to meet the, generally applicable, four year continuity safe harbor (assuming the project began construction in 2035).

Exhibit 2: Specified foreign entity definition

- There is a five-clause definition of *specified foreign entity*:
 - i. a foreign entity of concern described in subparagraph (A), (B), (D), or (E) of section 9901(8) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283))¹
 - ii. an entity identified as a **Chinese military company operating in the United States** in accordance with section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021)
 - iii. an entity included on a list required by clause (i), (ii), (iv), or (v) of section 2(d)(2)(B) of Public Law 117-78 (135 Stat. 1527) [(i.e., **Uyghur Forced Labor Prevention Act**)],
 - iv. an entity specified under section 154(b) of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-31);²
 - v. *a foreign-controlled entity. § 7701(a)(51)(B).*

Exhibit 2: Specified foreign entity definition (cont'd)

- There's a five-clause definition of *foreign-controlled entity*:
 - i. “the government (including any level of government below the national level) of a *covered nation*,³
 - ii. “an agency or instrumentality of a government described in clause (i),
 - iii. “a person who is a citizen or national of a **covered nation**, provided that such person is not **an individual who is a citizen, national, or lawful permanent resident of the United States**,
 - iv. “an entity or a qualified business unit (as defined in [section 989\(a\)](#)) **incorporated or organized** under the laws of, or having its **principal place of business in, a covered nation**, or
 - v. “an entity (including subsidiary entities) controlled (as determined under subparagraph (G)) by an entity described in clause (i), (ii), (iii), or (iv).” [§ 7701\(a\)\(51\)\(C\)](#).

Exhibit 2: Specified foreign entity definition (footnotes)

1. Explanation of subclauses (A) through (E) of clause (i):
 - (A) “designated as a **foreign terrorist organization** by the Secretary of State under [section 1189 of Title 8 of the US Code](#)”;
 - (B) “included on the list of specially designated nationals and blocked persons maintained by the **Office of Foreign Assets Control** of the Department of the Treasury”;
 - (C) “owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is listed in [section 2533c of Title 10 of the US Code](#)”;
[Explanation: section 2533c(d)(2) of Title 10 of the US Code refers to **North Korea, China, Russia and Iran.**]
 - (D) “alleged by the Attorney General to have been involved in activities for which a **conviction was obtained** under—
 - “(i) chapter 37 of title 18 (commonly known as the “Espionage Act”) (18 U.S.C. 792 [791] et seq.);
 - (ii) section 951 or 1030 of title 18;
 - (iii) chapter 90 of title 18 (commonly known as the “Economic Espionage Act of 1996”);
 - (iv) the Arms Export Control Act (22 U.S.C. 2751 et seq.);
 - (v) sections 2274, 2275, 2276, 2277, or 2284 of title 42;
 - (vi) the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or
 - (vii) the International Economic Emergency Powers Act 3 (50 U.S.C. 1701 et seq.)”; or
 - (E) “determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be **engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States** under this chapter.”
2. The entities listed in section 154(b) of the National Defense Authorization Act for Fiscal Year 2024 are:
 - “(1) Contemporary Amperex Technology Company, Limited (also known as “CATL”).
 - (2) BYD Company, Limited.
 - (3) Envision Energy, Limited.
 - (4) EVE Energy Company, Limited.
 - (5) Gotion High tech Company, Limited.
 - (6) Hithium Energy Storage Technology company, Limited.
 - (7) Any successor to an entity specified in paragraphs (1) through (6).”
3. [Section 7701\(a\)\(51\)\(I\)\(ii\) of the Code](#) provides that the term covered nation is defined [4872\(f\)\(2\) of Title 10 of the US Code](#). That provision of Title 10 provides that the following countries are covered nations:
 - “(A) the Democratic People’s Republic of North Korea;
 - (B) the People’s Republic of China;
 - (C) the Russian Federation; and
 - (D) the Islamic Republic of Iran.”



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