Bipartisan Policy Center

# Protecting Energy Tax Credits from U.S. Adversaries

## SIX KEY PRINCIPLES

With growing congressional interest in adding Foreign Entity of Concern (FEOC) restrictions to the energy tax credits, BPC convened a series of workshops with representatives from the energy and manufacturing sectors and bipartisan experts to discuss this issue. The goal was to strengthen bipartisan support for these credits while maintaining incentives for U.S. energy and manufacturing investments.

Informed by the workshops, BPC developed six principles to consider:

### 1. Design New Restrictions in a Manner that Preserves Energy Tax Credits

New restrictions should address FEOC project eligibility concerns while preserving the energy tax credits. They must not undermine the existing investment incentives that are vital for American projects essential to national security, energy reliability, and affordability. Bipartisan proposals like the American Tax Dollars for American Solar Manufacturing Act, which would introduce FEOC restrictions to 45X, and a Congressional Review Act resolution challenging the credit's guidance, demonstrate a shared concern about Chinalinked companies benefiting from the energy tax credits. A balanced approach to new restrictions should prevent U.S. tax dollars from flowing to adversaries while maintaining incentives for domestic energy and manufacturing investments.

### 2. Avoid Penalizing Minimal FEOC Ownership

New FEOC restrictions should clearly define "ownership," "control," and "influence" to avoid penalizing companies with minimal, noncontrolling FEOC involvement. For example, publicly traded entities with diverse ownership should remain eligible even if a small percentage of their shares are held by a FEOC. Recent federal guidance sets a threshold of less than 25% FEOC ownership for project eligibility, a standard already used by the Commerce, Treasury, and State departments to determine parent company control. This approach aligns with existing federal frameworks and provides clear thresholds to reduce ambiguity.

Ownership restrictions must also be carefully considered for joint ventures, particularly in the critical minerals sector, where shared ownership models are common. Partnerships with China-linked companies are often unavoidable due to China's dominance in global supply chains. Disqualifying projects with these agreements altogether risks setting the U.S. further behind in securing critical mineral supply chains. Instead, restrictions should focus on whether a FEOC controls a project's production or holds majority ownership. This approach continues to support projects vital for securing our most fragile supply chains without giving FEOCs undue control.

### 3. New Sourcing Restrictions Should be Targeted and Include De Minimis Exemptions

If new sourcing restrictions are implemented, they should only target specific inputs vital to securing U.S. supply chains and incorporate de minimis exemptions to prevent projects from being disqualified over minor or incidental FEOC inputs. Overly broad language, such as "a project may not source any components or material from a FEOC," creates excessive compliance burdens and increases uncertainty for investors and developers without strengthening U.S. supply chains. For example, a U.S. battery or solar manufacturer sourcing critical minerals and vital components domestically could lose 45X eligibility because minor inputs, such as standard wiring and basic plastics, were sourced from China. To avoid this, sourcing restrictions should be specific and targeted, focusing on vital inputs, such as critical minerals and battery components, where FEOCs exert significant control over global supply chains. Broad rules create unnecessary risk and uncertainty, potentially deterring investment in vital projects necessary to decrease adversarial control over these supply chains.

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## 4. Allow Responsible Technology Licensing

The U.S. must expand domestic production capacity in key supply chains, including critical minerals, batteries, and solar technologies, to enhance economic resilience and competitiveness. To remain globally competitive, U.S. projects need access to the most advanced technologies.

Over the past decade, China has made notable advancements in battery chemistries and production methods, positioning its companies as industry leaders. Allowing U.S. companies to license these cutting-edge technologies and manufacture them domestically can boost U.S. production capacity and provide valuable hands-on experience to American workers. If the U.S. doesn't produce these innovations at home, adversaries will, putting us behind. China has successfully leveraged this strategy to train its manufacturing and research workforce in sectors where U.S. innovation led but production moved overseas. Adopting a similar approach could help the U.S. reclaim leadership in these critical industries. However, new restrictions should not allow technology licensing agreements that provide a FEOC control or significant influence over the manufacturing process. This approach ensures that the U.S. builds advanced technologies at home while ownership and decision-making remain firmly out of our adversaries' hands. This structure mirrors the IRS's 30D guidance.

## 5. Adopt Simple and Clear Statute

Investors and project developers prioritize certainty above all else. New restrictions should be clear, specific, and detailed, providing a straightforward path to compliance. Ambiguous statutes or overly complex compliance systems could lead to prolonged rulemaking at the agency level, creating years of uncertainty as the private sector awaits final guidance. For instance, 30D's complexity resulted in nearly two years of rulemaking between the IRA's passage and DOE's final guidance. Avoiding such delays is crucial, as tax credits are already two years into their 10-year lifespan. Where existing legal and regulatory frameworks, such as 30D's FEOC guidance, are suitable, they should be used instead of creating entirely new systems that agencies must develop from scratch.

## 6. Set Realistic and Phased Compliance Timelines for Sourcing Restrictions

If new sourcing restrictions are considered, they should include phased compliance timelines to allow gradual implementation rather than requiring immediate adherence. This approach balances the need to reduce reliance on FEOCs with the realities of domestic capacity constraints and existing offtake agreements. The goal should be to maximize the number of projects that adhere to new restrictions, which is more achievable by setting a compliance glidepath rather than undermining projects that are not immediately compliant. At BPC's workshops, stakeholders expressed differing opinions on appropriate timeline lengths. While there was broad agreement that six months should be the minimum, providing time for companies to make immediate changes that would allow them to remain eligible, some participants suggested up to two years to account for existing contracts and limited domestic production capacity in certain sectors. However, with most IRA credits expiring in about eight years, extended timelines may not be feasible. An exception could be the critical mineral credit under 45X, the IRA's only permanent provision. Tailored timelines for each credit or sector could be based on available non-FEOC-tied production capacity.