

ALTERNATIVE POWER PLAYS

Tax Credit Episode Fact Sheet

KEY POINTS

Interplay Between the One Big Beautiful Bill and Trump's Executive Order

- The House bill nearly eliminated the ITC and PTC for wind and solar. Although the initial Senate bill did not eliminate the credits, it significantly reduced their applicability. Senate Republicans modified the ITC and PTC provisions to offer more certainty for developers. However, House conservatives refused to vote for the OBBBA, so President Trump promised to narrow eligibility for those credits, leading to the EO.

ITC and PTC Credits and Beginning of Construction (BOC)

- There are 2 basic timing principles impacting the ITC and PTC:
 - First is when the facilities are "placed in service".
 - Second is when the BOC occurred.
- Safe Harbor Methods for BOC include:
 - **Five Percent Safe Harbor:** When the taxpayer pays or incurs 5% or more of the total cost of the energy property.
 - **Physical Work Test:** When significant physical work begins, typically involving the construction of essential assets for the energy property.
 - **4 Year Continuity Safe Harbor:** If a facility is placed in service within four calendar years of construction start, the continuity requirement is satisfied.

The OBBB

- **2027 Placed in Service Requirement:** The Production Tax Credit (PTC) and Investment Tax Credit (ITC) are terminated for solar and wind production facilities which are placed in service after December 31, 2027 – but not for facilities that begin construction within 12 months after enactment.
- **Material Assistance Rule:** These rules prohibit the sourcing of money and materials from a "foreign entity of concern". Certain rules which prohibit the "material assistance" from a "foreign entity of concern" do not apply to facilities whose construction begins by December 31, 2025.

• OBBB Codifies Prior IRS Guidance for these FEOC

Purposes: For purposes of these "material assistance" rules, the OBBBA expressly codifies the 2013 and 2018 IRS guidance "(as subsequently clarified, modified or updated) as in effect on January 1, 2025".

Trump's Executive Order

- The EO states it's the policy of the U.S. to rapidly eliminate the market distortions and costs imposed on taxpayers by so-called "green" energy subsidies and requires the Treasury to enforce the termination of wind and solar credits through necessary actions, including new guidance, to prevent circumvention of BOC policies and restrict broad safe harbors unless a significant portion of the facility has been built.

IRS' New Guidance:

- The new guidance clarifies that the 5% Safe Harbor is not available for wind and solar production facilities, though it may still be used for certain low-output solar facilities with a maximum net output of 1.5 megawatts or less. The guidance maintains the 4-year safe harbor for satisfying continuity rules and primarily focuses on establishing a BOC safe harbor to avoid the 2027 placed-in-service requirement, explicitly stating it does not address the separate BOC rules related to the FEOC requirements, for which additional guidance is being drafted as necessary under the OBBB.

TOP TAKEAWAYS

- Developers can engage with Senate Republican supporters of wind and solar to make your case for ensuring Treasury adheres to the Senate ITC and PTC language.
- For purposes of the 12-month BOC exception to the end of 2027 Placed in Service Requirement, taxpayers developing wind and solar production facilities must comply with the new guidance by complying with the Physical Work Test.
- For BOC requirements related to other energy projects, the path of least resistance will be to comply with this new guidance, and the 5% threshold still appears to apply.
- Developers and taxpayers may feel compelled to seek a resolution through the courts, depending upon what changes, if any additional changes are made by the IRS to the BOC rules.