



MEMO

TO: Interested Parties – DRAFT!

FROM: Jeremy Kalin

DATE: 17 July 2025

RE: Impact of July 7, 2025 Executive Order related to Energy Tax Credit provisions in HR1

Congress passed HR1 on July 2, 2025 and the bill was enacted on July 4, 2025.

The most conservative Members of Congress extracted a side deal with the White House to go beyond the parameters of HR1 and attempt to further restrict access to clean energy investment tax credit, particularly the 48E Investment Tax Credit for wind and solar projects.

On July 7, 2025, the President issued an Executive Order requiring the Secretary of the Treasury, by August 17, 2025 to take the following steps:

1. Issue new and revised guidance for wind and solar facilities under the Section 48E ITC as deemed appropriate and consistent with applicable law to ensure that "policies concerning 'beginning of construction' are not circumvented, including by preventing the artificial acceleration or manipulation of eligibility and by restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built," and
2. take action as deemed appropriate and consistent with applicable law to implement the enhanced Foreign Entity of Concern (FEOC) restrictions in the OBBB.

This memo provides an overview of the possible impact of that Executive Order, for planning purposes.

1. The EO itself has no legal effect – it directs Treasury to issue guidance by Aug 17.
2. That Aug 17 guidance will likely be on 3 core issues:
 - a. FEOC implementation – both the Material Assistance requirement (that does not take effect until 1/1/26) and the Prohibited Foreign Entity ownership, control and debt restrictions.
 - b. Increasing the burden to meet beginning construction thresholds – both a higher hurdle for “physical work of a significant nature” and potentially eliminating the entire 5% Expenditure Safe Harbor entirely – or pushing it up to something like 20-50% (thinking cynically, of course).

- c. Eliminating or significantly reducing the Continuous Efforts Safe Harbor that provides 4 years (and practically slightly longer) to place in service a project after it has begun construction.
3. That Aug 17 guidance could be forward looking (from Aug 17 onward) as the IRS had done traditionally. It could look back and apply to projects that begin construction on July 4, 2025 or after (the date of enactment). Or it could look back so far as either May 25, 2025 or June 16, 2025, the first Committee action on HR1 in the House or the Senate, respectively. If the Aug 17 guidance tries to apply to projects before May 25, 2025, then it's a clear taking and I'd be surprised if that guidance were to survive a court challenge.

Here's the current status:

1. Projects that begin construction by end of 2025 to avoid FEOC Material Assistance requirements can use the existing 2018-59 Notice begin construction thresholds – see page 498 of HR1 – because Congress codified those notices in the FEOC Material Assistance definition.
2. Projects that are placed in service by Dec 31, 2027 can claim the ITC, regardless of when they begin construction.
3. Projects that start construction soon will almost certainly be far enough along by July 4, 2026 to meet the higher threshold in the Aug 17 guidance to have a later Placed in Service deadline, such as end of 2028 or end of 2029.
4. Projects that start construction after Aug 17 will know the specific thresholds to meet that new requirement by July 4, 2026, and by Aug 17 we will know the Placed in Service deadline for those projects.