



The Pieces Are in Place – Safe Harbor Your Solar Project Now and Avoid Future Energy Shocks!

Installing solar energy provides the lowest-cost energy for commercial and industrial users in most states and does not face the price volatility of natural gas and oil. In some jurisdictions, the payback is under two years with the 48E Investment Tax Credit. Despite the benefit cheap power has for domestic manufacturing, the Trump administration, through the One Big Beautiful Bill Act (OBBBA), eliminated the 48E credit for projects that start after July 4, 2026, and do not finish before December 31, 2027. The OBBBA also increased the cost of 48E projects by limiting the use of components from or controlled by Foreign Entities of Concern (FEOC). Projects that seek to utilize the 48E credit need to comply with both criteria.

First, FEOC Compliance.

The OBBBA limits the use of inexpensive Chinese solar components by imposing FEOC restrictions. Projects starting after January 1, 2026, need to be FEOC compliant to qualify for the 48E credits.

FEOC prohibits a qualifying project from utilizing more than a statutory threshold of components from Chinese and Chinese-influenced manufacturers. In February of 2026, the Trump administration released guidance on FEOC compliance ([Notice 2026-15](#)). In general, suppliers, vendors, manufacturers, and project developers have the knowledge to certify FEOC compliance but the taxpayer who utilizes the credit bears the risk of non-compliance. Prior to Notice 2026-15, there was uncertainty around how this administration would interpret the FEOC requirements. Notice 2026-15's safe harbor requirements were largely uncontroversial and, to date, have not been preemptively challenged.

At minimum, taxpayers need to contractually ensure the project is FEOC compliant, adheres to Notice 2026-15, and conduct a proportional amount of due diligence.

Absent fraud on the part of the taxpayer, it will be difficult for the IRS to challenge a taxpayer's use of the credit (in an audit) if the taxpayer is able to provide records showing reasonable due diligence. Generally, the IRS has three years to audit a taxpayer unless there is fraud. There is always a risk that the IRS believes the taxpayer is dishonest, but a documented good-faith belief will go a long way toward eliminating that risk.

In addition, certain Section 50 recapture rules apply to 48E credits. The recapture period extends beyond the normal 3-year statute of limitations for taxpayers, but it is limited in scope. For example, the credit can be clawed back if a "specified taxpayer" makes an "applicable payment" to an FEOC entity during the 10-year period after the project is commissioned. The "specified taxpayer" is the taxpayer claiming the credit, not the supplier; therefore, this is not a material risk for most taxpayers.

Second, the 48E Sunset.

The OBBBA limited the 48E credit to solar and wind projects that started work before July 4, 2026, or are commissioned by December 31, 2027. Last year, the IRS issued [Notice 2025-42](#), which limits the safe harbor for solar and wind to the "Physical Work Test" to establish that continuous construction began before July 5, 2026. The limitation has been challenged by some states and highly reputable NGOs, so taxpayers have a good faith basis for utilizing the old rules even though the taxpayer risks penalties if the taxpayer is audited and the U.S. Tax Court agrees with Notice 2025-42.

To qualify under [Notice 2025-10](#), work must be physical work of a significant nature, depending on the relevant facts and circumstances. The focus is on the "nature of the work performed, not the amount or cost". Notice 2025-42 only provides one example for solar facilities: "The installation of racks or other structures to affix photovoltaic (PV) panels, collectors, or solar cells to a site." According to Notice 2025-42, once construction begins, the taxpayer will satisfy the Continuity Requirement if the taxpayer maintains a continuous program of construction.

A continuous program of construction involves continuing physical work of a significant nature. Notice 2025-42 provides a safe harbor for projects placed in service within four calendar years after the calendar year during which construction began. It is unclear if the safe harbor applies to all projects, including those with a significant planned gap in the “continuous work”. However, based on the plain language of the notice, taxpayers have a good faith basis to claim that any projects that meet the safe harbor test qualify, even if there are planned gaps in construction.

Minimize the Risk.

To minimize risk, projects should take steps to ensure their project meets both safe harbor tests articulated by the Trump administration. If the project cannot, taxpayers can keep the option to claim the 48E credits open by meeting the previous administration’s interpretations and / or the statutory criteria. Numerous circuits have held that IRS Notices that do not comply with the Administrative Procedure Act (APA) are not enforceable (e.g., [Green Rock LLC v. Internal Revenue Serv.](#)). Notices 2025-42 and 2026-15 do not comply with the APA, and it is unclear if the Tax Court will follow the administration’s lead. Thus, projects that meet the statutory requirements but not the Trump administration’s may be able to utilize the 48E credits but will do so with an increased risk of a penalty if audited by an understaffed IRS.

The debate over which test applies may be academic since the next administration and an already gutted IRS will have to enforce these limits. All taxpayers who claim ITC credits for projects that need the safe harbor (come online after December 31, 2027) will claim on their TY 2028 returns, which are filed in 2029. The next administration may have a more liberal interpretation or a different focus.

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