THIRD WAY

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The Senate's Foreign Entities of Concern Provisions Are a Major Concern for Domestic Energy and Manufacturing

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In their respective reconciliation bills, the U.S. House and Senate have each proposed to eliminate eligibility for several energy tax credits for entities that have—or that cannot definitively prove they lack—ownership by, contracts with, or supply chain inputs from certain "prohibited foreign entities." [1] These restrictions are commonly referred to as foreign entities of concern (FEOC) rules. This memo provides context and analysis of the FEOC provisions in the bills, primarily focusing on the text published by the Senate Finance Committee and potential implications for relevant industries. An appendix briefly describes the application of FEOC requirements through recently-enacted laws and agency guidance.

Tax experts have described the FEOC proposals as making the energy tax credits "cost-prohibitive," with both House and Senate versions considered "unworkable." [2] Despite a bipartisan history of safeguarding critical domestic industries, technologies, and supply chains, these proposals currently under debate add an overwhelming level of bureaucratic complication. Doing so upends those longstanding policy objectives and instead will weaken America's clean energy industry—and may ultimately make the US even more reliant on countries like China.

Congress should instead redirect these efforts toward the shared goals of incentivizing taxpayers to pursue complementary supply chain security, competitiveness, and clean energy deployment policy goals. Rather than weakening existing tax incentives and ceding U.S. competitive advantage and growth to China or other countries, Congress should see FEOC as a set of tools that can strengthen domestic interests when made with clarity and accountability for taxpayers and the federal government alike. Congress has a narrow window of time to course correct, but that will require vocal engagement from key industries and openness to those fixes.

Snowballing Complexity: the 2025 FEOC Proposals

A number of tax credits, grant programs, and other policies limit participation of foreign entities with close ties to China, Iran, North Korea, and Russia, including their governments, military officials, and national champion companies. The dominance of these entities over supply chains and financing, particularly of strategic technologies like semiconductors, batteries, and critical minerals, raises valid concerns, because their goals are not aligned with those of the US.

Protecting American interests is important, especially when the federal government is offering incentives. That said, the FEOC requirements placed on tax credits for clean energy (and only for clean energy) in the bill passed by the House of Representatives on May 22, 2025 were so onerous or vague that few taxpayers could be confident in their ability to comply. [3]

Perhaps in response to concerns raised by businesses, the Senate Finance Committee made some key improvements to FEOC provisions in its own text. But if the goal was to have requirements that are tough but achievable, the Senate's bill unfortunately still misses the mark. The Finance Committee's text retains several FEOC provisions that made the House version unworkable, while adding new complexities of its own. These include:

- Requiring taxpayers to understand new layers of relationships (legal, financial, and political) between the taxpayer; their suppliers, debt holders, owners, and contractual counterparties; and the debt holders, owners, and contractual counterparties of their suppliers.

- Basing compliance on a taxpayer's ability to access legal and financial information from entities that are multiple tiers removed and that may face proprietary and other restrictions to sharing data.

- Instituting uncertain thresholds for what triggers FEOC restrictions on materials, subcomponents, and components for manufacturers and clean electricity project developers.

- Creating tax rules that may be as difficult to administer for the Internal Revenue Service as they are challenging for taxpayers to access.

- Adding costs and time across transactions, compliance, and logistics for companies and ultimately for their customers.

Like the House, the Senate applies some level of FEOC rules to the following credits:

- 45Q - Carbon Oxide Sequestration Credit;

- 45U - Existing Nuclear Production Credit;

- 45X - Manufacturing Production Credit;

- 45Y - Clean Electricity Production Credit;

- 45Z - Clean Fuel Production Credit;

- 48E - Clean Electricity Investment Credit;

- 30D - Clean Vehicle Credit. [4]

FEOC requirements for all of the credits listed would take effect in Tax Year 2026, however in some cases, the requirements would apply to new production from existing facilities that had expected to receive tax credits based on the prior rules. The application of FEOC restrictions varies to some degree, with the most extensive rules applying to the 45Y and 48E electricity credits and the 45X manufacturing credit.

The Senate bill retains the House bill's three main categories of entities prohibited from receiving tax credits:

Specified Foreign Entities (SFE): The first category of prohibited FEOC pertains to entities on one of a number of existing government lists of prohibited entities, entities headquartered in a “covered nation” (China, Russia, Iran, North Korea), citizens or nationals of a covered nation, and businesses held, 50% or more, by one any of the above (or their corporate relatives). [5] The SFE restrictions may apply to taxpayers with existing credits and could impact ongoing production or construction across any relevant project.

Foreign Influenced Entities (FIE): The next level of FEOC restriction applies to entities owned by a prohibited entity, with debt held by one, with board seats appointed by one, or that make substantial payments for services, IP, interest, etc., to a prohibited entity. Triggers include a 25% or greater ownership stake by an SFE, multiple SFE ownership stakes reaching 40% or greater, and financial interests such as debt reaching 40% or greater. These rules are, for the most part, similar to those in the House bill. However, the Senate proposal reduces the amount of information a taxpayer will need across multiple levels of financial relationships between companies. Namely, unlike the House bill, the Senate bill only deems entities to be FIEs if they have a prohibited relationship (ownership, debt, etc.) directly with an SFE, rather than covering entities that have those types of relationships with other FIEs. For instance, having debt held by an entity that, in turn, has debt held by an SFE is not disqualifying in the Senate bill. Nonetheless, the FIE restriction in the Senate would require taxpayers to assess financial and corporate relationships for which they may have no information or ability to access.

Additionally, the Senate proposal changes the test of what kinds of contracts between a taxpayer and a prohibited entity are sufficient to deny the credit. Due to extremely broad drafting, these restrictions which apply to any "contract, agreement, or other arrangement" [6] could capture most business transactions.

Below are some hypothetical examples demonstrating the complexity of FIE requirements in the Senate bill:

Example 1 - Foreign-controlled entity: Supposing a subsidiary of a Russian oil and gas company enters a joint venture with a multi-national oil major to invest in a US direct air capture facility. The Russian company owns a 51% equity stake in the subsidiary, which has a 25% stake in the facility. This may trigger the FIE rule.

Example 2 - Debtor's prison: In another hypothetical, say a large domestic nuclear power company borrowed money in 2020 to keep its existing nuclear operations online. It will still have that debt on its books in 2028 and beyond, including over 40% of the debt which was subsequently purchased by a Russian bank invested in the uranium supply chain. This may trigger the FIE rule.

Example 3 - Public bonds, private data: A large municipal utility finances its 2026 investment in solar and batteries with municipal bonds. How will this municipal utility know whether 40% or more of its debt, which is traded on liquid bond markets, is now held by SFEs? Does it hire accountants to monitor the bond market? Should it investigate the partners, hosting countries, or other aspects of the financing? How does it strike a balance between putting together a deal package for investors and doing background checks on any potential debt or equity stake?

Example 4 – Contractual counterparty: In August 2025, a solar wafer producer enters into a contract to buy certain specialized manufacturing equipment from a Chinese supplier, the only supplier of such equipment in the world. This contract confers no ongoing control by the Chinese supplier over the US solar producer. Because this contract is with an SFE, the US company is deemed an FIE and is ineligible for the tax credit for the wafers it produces. In fact, the solar cells and modules the company produces, using its American-made solar wafers, are also ineligible, as is the power plant that it has built using its own solar products.

Material Assistance: The Senate bill improves on the House bill—which broadly applied this restriction to any component, subcomponent, or upstream material in the supply chain that came from a FEOC—by instead denying a credit only to those electricity generators and manufacturers who use more than a threshold amount of components or materials from prohibited foreign entities, determined by cost. This approach is more reasonable, in theory, but would nonetheless require some accounting gymnastics and unreasonable knowledge from taxpayers.

Due to ambiguous drafting, this section does not make clear whether a taxpayer must know the costs and origin of all of its direct components (or, for manufacturers, direct material inputs), or the costs and origins of subcomponents as well, or the subcomponents of subcomponents, or their materials, and so on.

Second, while the Senate bill provides clear "safe harbor" default assumptions that wind, solar, and storage facilities can use, technologies such as geothermal, nuclear, manufacturers, and others are left in the dark as to which components they have to track, and how to get commercially sensitive information about the costs of subcomponents they will need to demonstrate compliance. And once a taxpayer identifies the right components, it will need to ask its suppliers not only about the nationality and headquarters of all of their owners, but also about their suppliers' debt holders and contractual counterparties to correctly calculate whether they have crossed the threshold of "too much" FEOC material.

Though an improvement on the House-passed legislation, the FEOC provisions in the bill released by the Senate Finance Committee still create an unworkable maze that will freeze investments without meaningfully advancing US economic or security interests. The window may be closing, but there is still an opportunity for Congress to address the concerns being raised by industry and investors and enact FEOC requirements that give American businesses the certainty and clarity they need, while further safeguarding vital supply chains.

Appendix

The Origins of FEOC Provisions

For decades, distinctions between the private sector and government over ownership, influence, financing, and global market access of companies and goods have shifted and blurred in the People's Republic of China. [7] Its strategic investments in the extraction, processing, and manufacture of minerals and technologies from solar panels to semiconductors has led China to dominate some supply chains. In 2019-2022, the U.S. Congress raised concerns regarding China's dominance over such supply chains following pandemic-related disruptions, its dominance of crucial technologies like batteries used for energy storage and electric vehicles, and perhaps most prominently, its influence over advanced semiconductor supply chains.

Congress began applying the concept of "foreign entities of concern" (FEOC) to identify how to prevent the purchase of goods, particularly those of strategic importance, the flow of incentives, or other activities that would benefit countries or entities that present a strategic or economic threat to U.S. interests. It broadened the definition and application of the FEOC term in the 2021 National Defense Authorization Act (NDAA), which prohibited listed entities from participating in that law's semiconductor research and development activities. [8]

In these initial bills, the terms "covered entities," "foreign entities," "foreign country of concern," and FEOC reveal the complexity of financial, corporate or legal, supply chain, and nation-state interests and entity types that Congress was seeking to address. [9] Specific to FEOC, the relevant 2021 NDAA provision draws together several lists including entities such as sanctioned individuals, terrorists, suppliers in non-allied foreign nations, among other categories. [10]

For example, the 2021 NDAA's FEOC provisions prohibit the Department of Commerce from providing financial assistance for semiconductor manufacturing to entities such as Boko Haram (a designated terrorist organization), China Mobile (a Chinese state-owned enterprise), companies headquartered in covered nations including China, Iran, North Korea, and Russia, or individuals sanctioned by the Department of the Treasury. [11]

The 117th Congress & Current Law: First Major Applications of FEOC to Supply Chains

Concerns over foreign influence in supply chains grew throughout the 117th Congress (2021-22), particularly for semiconductors, batteries (grid and electric vehicles), and critical minerals. The dominance of China's mineral production and processing industry became increasingly clear and continues today, reaching, for example, 70% of rare earth elements production and processing in 2022. [12]

Congress passed three major laws that applied FEOC provisions to federal policies and incentives: the Infrastructure Investment and Jobs Act (better known as the Bipartisan Infrastructure Law of 2021 (BIL)), the CHIPS and Science Act of 2022, and the Inflation Reduction Act of 2022 (IRA).

The BIL applied the 2021 NDAA definitions to new battery and critical mineral grant programs at the Department of Energy (DOE), prioritizing awards to recipients that neither import nor export battery materials from or to a FEOC and prohibiting the export of critical minerals to a FEOC. [13] For example, a battery recycler like Redwood Materials would be discouraged from exporting the mineral neodymium to a Chinese processor if it took part in or received funding from DOE's critical mineral R&D grant program.

The CHIPS and Science Act made taxpayers that met the definition of a FEOC ineligible for its semiconductor manufacturing investment tax credit. [14] Ultimately, the Departments of Commerce and the Treasury adopted the same definition of FEOC in their final rules regarding the CHIPS and Science Act tax credits and other programs. [15]

The IRA, FEOC Provisions, and Biden Administration Tax Guidance

Alongside several non-tax provisions focused on R&D and other parts of the domestic supply chains, the IRA negotiation resulted in a $7,500 tax credit for new clean vehicles excluding vehicles not meeting FEOC restrictions in their battery component or mineral contents after specified years. [16] The law adopted the FEOC definition enacted in preceding laws, but its application to electric vehicle batteries relied on DOE's 2024 interpretive guidance, which provided the first in-depth illustration of the law's implications for corporate structures, financial and governance interests, and other relationships among covered nations, FEOCs, and the battery supply chain. [17] In its guidance, DOE describes FEOCs as:

- An entity incorporated in, headquartered in, or performing the relevant activities in a covered nation;
- A company with at least 25% corporate governance voting rights, board seats, or stock interests held by the government of a covered nation;
- A company entering certain licensing or contracting arrangements with FEOCs without retaining certain rights over their operations.

The DOE guidance further detailed how it applied to the nesting of corporate structures (e.g., holding companies) and other elements that tee up the current bills. Even with these layers of administrative review, the FEOC restrictions in the Clean Vehicle Credit applied appropriate carrots and sticks to enable the growth of domestic battery supply chains, reaching 208 GWh of annual module capacity in

Q1 2025, to support electric vehicle production while stimulating only that domestic growth on the consumer's side. [18]

ENDNOTES

1. *U.S. Senate Committee on Finance*. *Legislative Text, Title VII, H.R. 1*. U.S. Senate Committee on Finance, 16 June 2025, finance.senate.gov/imo/media/doc/finance_committee_legislative_text_title_vii.pdf. Accessed 25 June 2025.

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3. *H.R. 1—119th Congress (2025–2026)*. *Congress.gov*, https://www.congress.gov/bill/119th-congress/house-bill/1/text. Accessed 25 June 2025.

4. FEOC provisions apply to the Clean Vehicle Credit, though the bill proposes eliminating this credit 180 days after enactment. *U.S. Senate Committee on Finance*. *Legislative Text, Title VII, H.R. 1*. 16 June 2025, https://www.finance.senate.gov/imo/media/doc/finance_committee_legislative_text_title_vii.pdf. Accessed 25 June 2025.

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8. *15 U.S.C. 4651-8 (2021).* The CHIPS and Foundries Act was enacted as part of the *William M. (Mac) Thornberry National Defense Authorization Act* for Fiscal Year 2021, Pub. L. No. 116-283 (2021). Earlier prohibitions include P.L.115-232 §889 which prohibits federal agencies from purchasing Chinese telecommunications or video equipment and was subject to litigation from Huawei in 2019. Accessed 25 June 2025.

9. *15 U.S.C. § 4651* (2021).

10. *15 U.S.C. § 4651(6)* (2021). Accessed 25 June 2025.

11. *15 U.S.C. §§ 4651–4658* (2021); *U.S. Department of State*, *Designated Foreign Terrorist Organizations*, accessed 20 June 2025, https://www.state.gov/foreign-terrorist-organizations/; *China Mobile*, *Fortune*, accessed 20 June 2025, https://fortune.com/company/china-mobile/; *U.S. Department of the Treasury, Office of Foreign Assets Control*, *Sanctions List Service*, accessed 20 June 2025, https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-country-information/sanctions-list-search. Accessed 25 June 2025.

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13. *42 U.S.C. §§ 18741 and 18743* (2021). Accessed 25 June 2025.

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