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Avoiding FEOC Risk While Waiting for Guidance: Key Takeaways from Infocast's Solar + Wind Conference

March 2026



Partner Michael Rodgers moderated a panel on March 17, 2026, featuring tax, financial and technical specialists from Baker Tilly, CohnReznick, Empact Technologies, FlexGen and Leo Berwick. The discussion focused on how developers, lenders and tax equity investors are navigating the Foreign Entity of Concern (**FEOC**) clean energy tax credit restrictions for projects with certain direct or indirect ties to China, Russia, North Korea or Iran. While grandfathered projects, which began construction prior to the application of the FEOC rules, are less risky, many current projects must now manage FEOC exposure in real time, particularly for new phases and repowerings, so the market is focused on practical structuring approaches to avoid risk. Recent guidance, which allows taxpayers to claim certain safe harbors (e.g., allowing supplier certifications to establish sourcing of project materials) to establish FEOC compliance, will feature prominently in these efforts and should be a meaningful boon as the market slowly gains comfort and familiarity with the FEOC rules.

That said, the panel pointed out that utilization of these safe harbors presents its own challenges as well and further guidance is needed in order for many projects to be bankable going forward. In particular, such guidance would ideally focus on filling gaps in the current FEOC rules dealing with "effective control," under which even certain boilerplate provisions in master contracts with suppliers can create latent FEOC issues. The panel also noted that FEOC concerns can arise not only from equity ownership but also from licenses, firmware and other intellectual property heavy arrangements, so due diligence increasingly must target equipment, firmware and IP rights as potential sources of hidden control or influence. In response, project documents are building in greater flexibility to change suppliers if FEOC issues emerge, and suppliers that cannot provide credible FEOC and domestic content support are becoming less competitive, particularly in the current absence of developed FEOC-specific insurance products.

Participants also discussed the strategic choice between production tax credits (**PTCs**) and investment tax credits (**ITCs**) in light of the longer FEOC "risk horizon" associated with ITCs borne out of a special new FEOC ITC 10-year recapture provision introduced by the One Big Beautiful Bill Act. With these new rules stretching the relevant risk period to over 10 years, questions are emerging regarding who will monitor compliance over time and how to assign contractual risk by way of representations, warranties and indemnities in projects looking to claim ITCs going forward. Continued refinement of FEOC guidance is expected, but, for now, key structuring and diligence decisions remain largely project-specific.

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