ACORE

March 30, 2026

SUBMITTED ELECTRONICALLY

The Honorable Kenneth J. Kies
Assistant Secretary (Tax Policy)
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

The Honorable Frank Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Comments in Response to Notice 2026-15
Guidance to Apply Interim Safe Harbors for Purposes of Determining a Taxpayer's Material Assistance from a Prohibited Foreign Entity; Other Prohibited Foreign Entity Guidance

Dear Assistant Secretary Kies and Chief Executive Officer Bisignano,

ACORE appreciates the opportunity to submit the following comments in response to the U.S. Department of the Treasury ("Treasury" or "Department") and Internal Revenue Service ("IRS") Notice 2026-15 ("the Notice") providing interim guidance on restrictions to certain energy credits under the Internal Revenue Code ("IRC" or the "Code"), as amended by Public Law 119-21, 139 Stat. 72, also known as the One Big Beautiful Bill Act ("OBBBA" or "the statute").

ACORE is a nonpartisan, nonprofit organization that operates at the intersection of affordability, reliability, and clean energy deployment. Our work is focused on stabilizing energy prices, strengthening the electric grid, and driving investment in cost-effective technologies to ensure that clean energy delivers for people, businesses, and the U.S. economy. ACORE's membership includes clean energy investors, developers, energy buyers, power generators, manufacturers, and energy providers.

After two decades of nearly flat electricity demand growth, U.S. demand for new electricity generation is forecast to rise between now and the end of the decade by an amount equivalent to adding the peak load of 15 New York Cities to the nation's grid. The scale of this growth is driven by a surge of activity over several strategic areas, including artificial intelligence ("AI") and large-scale data centers, domestic advanced manufacturing, and economy-wide electrification.

The private sector is working to meet this demand. Private infrastructure investment has tripled globally since 2016, with a higher-than-average concentration in energy markets. America already possesses the deepest private capital markets of any nation, but taking full advantage of those markets' desire to support U.S. electricity buildout requires continued business certainty. Energy infrastructure projects are multi-stakeholder, multi-year development and investment initiatives, making administrable, timely, and prospective tax guidance essential to private-sector efforts to meet rising power needs.

In November 2025, ACORE provided Treasury and the IRS with comments identifying several issues related to the prohibited foreign entity ("PFE") provisions for consideration and proposed solutions to

address those issues.[1] ACORE was encouraged to see Treasury and the IRS's recent Notice 2026-15 (also referred to as "the Notice"), which substantially addressed many of the issues identified related to the Material Assistance Cost Ratio ("MACR") rules under OBBBA and represents a positive step in providing necessary market clarity and certainty regarding implementation of the new law.

Following that November letter, as well as the requests for feedback in Notice 2026-15, ACORE's members, in addition to other market participants and stakeholders, appreciate the opportunity to provide feedback on that guidance and related matters.

Specifically, this comment letter covers four areas for Treasury and IRS consideration:

1. General principles for supporting business and investment certainty;
2. Matters related to PFE issues that were not addressed in Notice 2026-15;
3. Issues raised by Notice 2026-15; and
4. Responses to the questions posed in Section 7 of the Notice.

General Principles for Business Certainty to Drive American Electricity Investment and Affordability

As described above, the trajectory of U.S. electricity demand growth will require substantial private sector investment in new domestic generation, transmission, and related energy infrastructure. Energy tax credits provide critical market stability to help scale up domestic resources, including nuclear (fission and fusion), geothermal, hydropower, carbon oxide sequestration, bioenergy, wind, solar, battery storage, and advanced manufacturing. The ability of U.S. firms and other taxpayers to mobilize the necessary investments will depend in significant part on whether the guidance and rules governing such transactions continue to support long-term, highly complex, commercial decision making.

ACORE offers the following general principles for supporting these objectives. These principles support OBBBA's underlying national security and supply chain resilience objectives, preventing undue influence or control by foreign adversaries, while promoting business certainty, ensuring taxpayer compliance, and minimizing administrative burdens. Forthcoming guidance should prioritize overall clarity, prospective and/or transitional application, and reliance on existing standards. More specifically, ACORE respectfully requests Treasury and the IRS consider the following in developing further guidance and regulations:

- Apply requirements prospectively and, wherever possible, make clear that taxpayers may rely on existing rules, guidance, and generally applicable tax principles to streamline compliance.
- Permit taxpayers to rely on standard, existing representations, certifications, and publicly available data to ensure the reliability and verifiability of compliance information.
- Provide transitional relief for U.S. taxpayers who pursued investment, procurement, and contractual decisions in good faith prior to OBBBA and the release of future guidance and/or under existing rules.

[1] ACORE. Recommendation Letter to Treasury and the IRS re: Prohibited Foreign Entities Guidance (November 21, 2025), available online at: 2025.11.21_ACORE-PFE-Guidance-Recommendation-Letter.pdf.

- More generally, provide taxpayers with additional guidance and clarity as soon as possible to support timely and effective industry compliance with PFE-related rules without undue negative impact on development and financing.

Taken together, these principles would advance the statute's underlying purposes while promoting the administrability of evolving PFE-related guidance. IRC §§ 7701(a)(51)(K) and 7701(a)(52)(G) provide the Secretary with ample regulatory authority to achieve these principles when crafting more detailed guidance and rules on discrete policies and questions.

ACORE respectfully urges Treasury and the IRS to consider building upon the well-developed body of federal rules, accounting standards, market mechanisms, and reporting frameworks to ensure adherence to U.S. tax laws, as well as in a manner that is conducive to business certainty and responsible investment decision making. ACORE recognizes the efforts of Treasury and the IRS to strike such a balance in Notice 2026-15, and we strongly support the application of these general principles in forthcoming guidance.

General Comments Regarding Prohibited Foreign Entity Issues for Future Guidance

While Notice 2026-15 addresses important questions regarding the application of MACR rules, ACORE members and other stakeholders have identified additional PFE issues that warrant near-term clarification. Because these issues often stem from the practical realities of project finance and development, guidance issued to address the following four areas of clarification, as soon as practicable, would support the goals of the statute by allowing market participants to more efficiently perform diligence, structure transactions, and manage other PFE-related compliance obligations:

I. PFE diligence requirements

Issue to address: Without guidance as to the appropriate level of diligence, taxpayers may be forced to diligence an expansive universe of ownership and debt criteria beyond the scope and spirit of the PFE rules. These tests stand in addition to a slate of related federal rules to which U.S. firms are already subject, and that share OBBBA's intention to promote national security and consumer protection and related policy objectives. When considering taxpayers' compliance with such existing requirements, PFE rules may present a potentially duplicative and impossible layer of regulation.

Proposed solutions: ACORE's November letter outlined multiple options that would help to support compliance while minimizing administrative burdens on the taxpayer, including by providing safe harbor criteria or a "safe harbor certificate" tied to firms' satisfaction of existing legal requirements (e.g., registration, disclosure, and other rules applicable to firms operating in highly-regulated sectors such as banking, utilities, and others), facilitating government-certified identification of potential PFEs under various lists, and establishing a process to cure potential PFE-related noncompliance. Establishing a process for taxpayers to have Treasury review and cure such noncompliance, similar to the process established under IRC § 6695(b), would be particularly beneficial. This process would incentivize taxpayers to voluntarily seek Treasury and

the IRS review of such instances, providing the government with oversight to help identify and/or inform potential avenues or fact patterns that may present compliance concerns that may need to be addressed through future guidance or regulations.

II. Debt issuance requirements

Issue to address: IRC § 7701(a)(51)(D)(i)(I)(cc) provides that a taxpayer may be treated as a foreign-influenced entity ("FIE") if at least 15 percent of its debt is issued to one or more Specified Foreign Entities ("SFEs"). IRC § 7701(a)(51)(E)(II) establishes a similar threshold for publicly traded entities. Absent further clarification, these ambiguities could create compliance challenges for taxpayers and tax administration. In addition, failing to provide timely clarity on these matters risks healthy functioning of the bond market particularly for U.S. investor-owned utilities and public power producers. Unintended consequences of a lack of clarity include chilling debt issuance, raising the cost of capital, reducing investment in American electricity generation and transmission, and ultimately higher electricity prices for businesses and consumers.

Proposed solutions: Treasury and the IRS should provide guidance that clarifies that only debt first issued in the relevant taxable year is subject to PFE analysis, the scope of debt instruments subject to PFE analysis, the identity of the issuer, the party to whom the debt is issued, the taxpayer for purposes of PFE analysis, and the formula for calculating debt that is subject to the test for both public and private firms. ACORE's November letter further outlined these solutions.

III. Treatment of tax partnerships

Issue to address: Energy projects that utilize federal tax credits are commonly financed through partnership structures. Longstanding partnership rules under Subchapter K of the IRC treat partnerships as the relevant taxpayer for these purposes and should serve as the locus for PFE diligence. Furthermore, interpretation of the relevant provisions set forth in OBBBA, as well as previous Treasury rulemakings and federal court decisions, as well as the definition of "taxpayer" under § 7701(a)(14), best support the position that the partnership is the relevant taxpayer. Confirmation to that effect would be greatly appreciated by industry stakeholders.

Proposed solution: In the same manner that credit eligibility is tested at the partnership level, forthcoming guidance should confirm that PFE status is likewise determined at the partnership level, consistent with the principles of Subchapter K.

IV. Tax credit transfer liability

Issue to address: IRC § 6418(g)(5) provides that an eligible taxpayer may not elect to transfer any portion of a credit to a taxpayer that is an SFE. While the statute is clear regarding the prohibition on transferring credits as far as known SFEs are concerned, additional clarity with respect to the responsibilities of the transferring taxpayer, if any, will aid in compliance and tax administration.

Proposed solution: Guidance should clarify that, if any tax credit transferee is found to be a SFE, the result is that the tax credit transferee is not able to claim the credit it purported to purchase, and the transaction should be null and void but for the payment of cash (i.e., the transferee suffers a loss, but no other party is harmed) without further impact on the transferring taxpayer (absent any evidence of abuse or knowing disregard of the rules).

V. Effective control rules and intellectual property ("IP") licensing agreements

Issue to address: While OBBBA denies tax credits to PFEs under the appointment authority, ownership, or debt triggers, the law also denies tax credits in instances where "effective control" is conferred over key aspects of the production of eligible components, energy generation in a qualified facility, or energy storage project (See: IRC § 7701 (a)(51)(D)(ii)(I)(aa)). A non-exhaustive list of examples of effective control that taxpayers may rely on prior to issuance of regulations is provided, including as to licensing and other agreements (See: IRC §§ 7701 (a)(51)(D)(ii)(II) and (III)). § 7701 (a)(51)(A)(II) provides that taxpayers must make SFE determinations as of the first day of the taxable year after enactment. However, § 7701 (a)(51)(D)(i)(II), indicates that a payment that confers effective control to a PFE made during the "previous taxable year," could render a taxpayer an FIE. Several other clarifications that will help taxpayers comply with the law should also be considered in future guidance and regulations, including additional examples that illustrate the approach Treasury and the IRS will take to consider what kinds of conduct, transactions, or other commercial fact patterns taxpayers should be mindful of regarding each of the statutory examples of effective control concerns.

Proposed solutions: The "final" language of OBBBA (Senate Amendment 2360) was proposed on the Senate floor on June 28, 2025. The law was enacted on July 4, 2025. The law is generally applicable in the tax year after enactment, and it does not appear that Congress intended to give taxpayers only seven days – from the release of "final" text to enactment – to evaluate any contractual arrangements, then seek to modify or nullify certain arrangements. Consequently, Treasury and the IRS should clarify that only licenses and similar arrangements that were entered into after the beginning of the "initial taxable year" after OBBBA enactment and which provide a PFE a level of "effective control" are taken into account, and that the "previous taxable year" language is applicable on a prospective basis after the initial taxable year.

Treasury and the IRS guidance should also clarify that taxpayers may: (1) reasonably rely on representations and certifications from its contractual counterparties and (2) consider a timing safe harbor that provides that taxpayers only have to confirm whether a contractual counterparty is a SFE at the time of contract execution (i.e., it is impractical to require ongoing diligence on contractual counterparties who may experience changes in ownership, potentially many tiers above the company's counterparty, and thus without the taxpayer's knowledge or control).

Treasury and the IRS should also consider appropriate guidance and procedures to allow taxpayers to resolve or "cure" any issues arising from a change in ownership of a contractual counterparty or other change in circumstance without penalty to the taxpayer, which should

include the ability for taxpayers to modify existing IP licenses. This would incentivize taxpayers to voluntarily seek Treasury and the IRS review of such instances, providing the government with oversight to help identify and/or inform potential avenues or fact patterns that present compliance concerns that may need to be addressed through future guidance or regulations. Establishing a process for taxpayers to cure such noncompliance, similar to the process established under IRC § 6695(b), would be particularly beneficial.

Further, Treasury should provide a definition of IP agreements and arrangements for this purpose. Analogous concepts can be found in the CHIPS Act which defines an IP agreement and includes common sense exceptions to this definition. For consistency, we recommend Treasury consider implementing similar definitions and exceptions in this context. We also support Treasury and IRS consideration of a de minimis threshold for IP arrangements, with the practical effect of ensuring objectively small contracts cannot be deemed to confer effective control.

Lastly, in revising the non-exhaustive list of examples presented in the statute, we respectfully urge Treasury and the IRS to consider providing an exclusive and exhaustive list of prohibited actions giving rise to effective control, accompanied by detailed examples contextualized in future guidance. On the contrary, leaving taxpayers to rely on a non-exhaustive list of examples may create unintended ambiguity regarding compliance with effective control rules.

VI. Rules for credit recapture.

Issue to address: Notice 2026-15 does not elaborate on the application of the rules under § 50(a)(4), which provide for credit recapture if an “applicable payment” is made by a “specified taxpayer” within the 10-year period beginning on the date “such taxpayer” placed in service Investment Tax Credit (“ITC”)-eligible property under § 48E. The statutory language enacted by Congress provides a two-year implementation window to place projects into service before taxpayers are required to monitor for recapture as described in § 50(a)(4)(C).

The Notice also does not provide general direction on the scope of recapture rules, such as the implications of a recapture event for other properties owned and placed in service by the affected taxpayer. In the context of tax credit transfers under § 6418, the OBBBA did not include a notice provision for recapture events triggered by applicable payments, indicating that it would not be Congress’s intent to hold transferees liable for such recaptures.

Proposed solution: In pursuit of workable credit recapture rules aligned with the statutory language under § 50(a)(4), Treasury and the IRS should operationalize the two-year period specified in the recapture rules of § 50(a)(4) by clarifying that taxpayers will only be treated as a “specified taxpayer” with respect to ITC-eligible projects that are placed in service after the end of such period and that recapture will only occur with respect to the ITC-eligible property to which such payment relates (i.e., other projects owned by the taxpayer are not impacted). At present, guidance has yet to confirm that the statutory two-year implementation window will *not* subject taxpayers to recapture if they place into service qualified facilities before the two-year cutoff.

Forthcoming guidance should also further explain recapture liability in a § 6418 context. In doing so, Treasury and the IRS should confirm that liability for recapture does not extend to transferees.

VII. Equity ownership and PFE status for publicly traded entities.

Issue to address: The statutory language under § 7701(a)(51)(E) contains a broad exclusion from the general PFE equity ownership tests for certain categories of publicly traded entities traded on qualifying exchanges. However, under § 7701(a)(51)(E)(iii)(I), such a qualifying publicly traded entity may nonetheless be treated as an FIE if the entity is owned (i) 25% or more by a single SFE or (ii) 40% or more by one more SFEs, in each case, so long as such SFE is required to report its beneficial ownership under Rule 13d-3 of the Securities and Exchange Act of 1934 ("Rule 13d-3").

This rule would suggest that, so long as no single entity or group of entities required to report ownership under Rule 13d-3 reports ownership in excess the above thresholds, the publicly traded entity can conclusively determine that it is not a PFE. However, § 7701(a)(51)(H) provides that ownership, for purposes of the PFE rules, is determined applying the "upward attribution" deemed ownership rules set forth in § 318(a)(2).

While taxpayers can reliably determine the ownership percentages of reporting entities under Rule 13d-3, which the statute singularly and purposefully references with respect to certain publicly traded entities, the more general reference to the non-overlapping ownership attribution rules of § 318(a)(2) may create confusion for such entities.

Proposed solution: To appropriately implement the statutory text surrounding PFE status and publicly traded entities in a manner that permits publicly traded entities to reliably determine their PFE status, Treasury and the IRS should clarify that publicly traded entities may rely on the ownership positions reported by applicable entities under Rule 13d-3.[2]

General Comments Regarding Material Assistance Issues

Notice 2026-15 is an important step toward clarifying the application of MACR requirements under the OBBBA and providing much needed taxpayer-certainty. ACORE respectfully offers the following considerations regarding areas of further clarification and recommended solutions (the first section below discusses general matters in Notice 2026-15; the second section provides responses to specific questions presented in Section 7.01 of the Notice).

---

[2] We note that a similar issue arises in the context of determining whether a publicly traded entity is an SFE under the foreign-controlled entity category of SFEs. However, this issue presumably can be addressed in an identical manner (i.e., permitting a publicly traded entity to rely on the reported Rule 13d-3 ownership).

Clarifications Arising from the Interim Guidance in Notice 2026-15

I. Expand existing safe harbors to incorporate additional sectors.

Issue to address: Consistent with statutory references,[3] Notice 2026-15 authorizes taxpayers to rely on the domestic content safe harbor tables published in previous IRS Notices 2023-38, 2024-41, and 2025-08 ("2023-2025 Safe Harbor Tables") for purposes of meeting the Identification Safe Harbor described in Section 3.01 and Cost Percentage Safe Harbor described in Section 3.02. Notices 2024-41 and 2025-08 are distinct in providing taxpayers with official assigned cost percentages for specific project components and manufactured products, obviating the need for more burdensome taxpayer analysis of suppliers' direct costs.

However, any technologies presently absent from those assigned cost percentage safe harbor tables, which include geothermal, hydropower, and nuclear (and others), cannot use the Identification and Cost Safe Harbors described in Notice 2026-15 for compliance with the new material assistance requirements.

Proposed solution: Treasury and the IRS should consider integrating additional energy technologies via the 2023-2025 Safe Harbor Tables, leaning on industry expertise to arrive at accurate and representative equipment breakdowns and assigned cost values. We observe that widening the applicability of the 2023-2025 Safe Harbor Tables in future guidance would align with the technology-neutral tax regime currently in effect, as well as provide certainty to the full universe of technologies to which PFE rules and standards may apply.

II. Further address qualified interconnection property.

Issue to address: Under § 48E, taxpayers may include certain expenditures for qualified interconnection property ("QIP") in the base of eligible credits when placing in service qualified facilities under 5 megawatts ("MW"). Section 3.01 of Notice 2026-15 provides that a taxpayer claiming credits under § 48E must calculate a separate MACR for claimed QIP.

However, taxpayers attempting to perform separate MACR calculations for QIP cannot rely on the compliance pathways that the Notice makes available to qualified facilities and EST. This is because the MACR calculation in § 7701(a)(52)(D)(i) is determined with respect to the "manufactured products" (MPs) that are part of a "qualified facility," which are in turn defined as "a component of a qualified facility, as described in § 45Y(g)(11)(B) and any guidance issued thereunder" or "any product which is identified by the Secretary pursuant to guidance or regulations[.]" Without further guidance on the meaning of MPs in the context of calculating a QIP MACR, taxpayers appear to be unable to make the necessary calculations to include QIP.

Proposed solutions: To streamline taxpayer compliance, uphold statutory intent, and ensure overall administrability, Treasury and the IRS should allow taxpayers to consider QIP as § 48E

[3] *See* reference to IRS Notice 2025-08, 139 Stat. 263.

eligible provided the qualified facility or energy storage technology otherwise satisfies the Clean Electricity MACR. This would address the lack of a viable pathway for calculating the QIP MACR for QIP, and would be appropriate given the low risk of PFE influence related to QIP given that utilities already use approved supplier lists for equipment that exclude PFE suppliers.

Treasury and the IRS could also consider the incorporation of QIP in existing safe harbor tables for purposes of satisfying the Identification and Cost Percentage safe harbors. We further recommend the incorporation of QIP in safe harbor tables on a combined basis with qualified facilities, such that taxpayers may opt to satisfy their MACR analysis obligations with or without the inclusion of QIP using information that is already available to taxpayers. Alternatively, ACORE would support the establishment of a separate category for QIP in existing safe harbor tables, provided that this pathway preserves optionality for the taxpayer.

Under either option, as well as to clarify QIP reliance on the Certification Safe Harbor under Section 4.03 of the Notice, Treasury and the IRS should also consider whether taxpayers may rely on certifications from the requisite owner-operator of QIP (e.g., interconnecting utility) , taking into account the indirect role of the taxpayer in procuring and installing such equipment. In addition, Treasury and the IRS should confirm that QIP may rely on the Notice's assignment-based tracking de minimis rule under Section 3.01(3)(b), which would put QIP items on similar footing to other items, while also providing an option for reducing administrative burdens on taxpayers and utilities. Finally, interconnection agreements are often signed years in advance and QIP may be constructed on a timeline different than that of the qualified facility, which can make it challenging for energy project developers and investors to reopen such agreements for renegotiation on account of PFE-related issues. Therefore, Treasury and the IRS should further clarify that the beginning of construction date for QIP is deemed to occur on the same date as the associated qualified facility.

III. Clarify the definition of "direct costs" and consider providing a full list of examples.

Issue to address: On the definition of "direct costs," Notice 2026-15 employs a thoughtful approach by focusing on the "acquisition costs" of the *taxpayer*, rather than the supplier's direct costs (emphasis added). As ACORE has commented previously,[4] a focus on suppliers' costs would compel taxpayers to gather commercially sensitive and sometimes proprietary information. Notice 2024-41 responded effectively to this problem, and Congress also sought to avoid such an outcome when enacting OBBBA by repeatedly referencing "direct material costs" in the statute.

Proposed solutions: Treasury and the IRS should further clarify that the only direct costs relevant for the purposes of Material Assistance analysis are indeed those paid or incurred by the taxpayer.

[4] *See* additional ACORE comments regarding IRS Notice 2023-38: Additional ACORE Comments on Domestic Content.

An additional area for clarification concerns what specific types of direct costs are encapsulated by the definition. Section 3.02(4)(a) of Notice 2026-15 provides some useful examples concerning direct material costs, such as "freight-in and tariffs paid," and directs taxpayers to existing regulations under §§ 461, 263A, and Treas. Reg. § 1.471-3. However, to avoid potential taxpayer uncertainty, Treasury and the IRS should provide a list of clear and binding examples of direct costs that taxpayers should include to comply with Material Assistance rules.

The Notice also appears to treat direct labor costs as necessary for qualified facility MACR calculations under §§ 45Y and 48E, but not for eligible component MACR calculations under § 45X. Treasury and the IRS should clarify this distinction and where it is necessary for taxpayers to include direct labor costs. Treasury and the IRS should also clarify that direct labor costs incurred to construct, assemble, and install QIP be included in the property's MACR test.

IV. Clarify the methodology of MACR calculation for hybrid projects.

Issue to address: To ensure proper application of tax rules, past Treasury and IRS rulemakings have provided specific direction for hybrid projects. For example, previous regulations have established that, when determining credits under § 48E,[5] the taxpayer tests credit eligibility under each qualified facility and EST separately.[6] Those regulations provided that § 48E does not support the treatment of a qualified facility and EST as a single creditable property even if such a hybrid system shares a single point of interconnection.

While Notice 2026-15 indicates that MACR calculations must be performed on a facility-by-facility basis, consistent with prior regulatory approaches under § 48E, this framework raises practical and interpretive questions for taxpayers in the context of hybrid projects. Hybrid systems, such as co-located generation and EST, often share certain infrastructure (e.g., interconnection equipment), as well as overlapping construction timelines and cost structures, which may complicate taxpayers' inputs across separate facilities for MACR purposes. Absent additional guidance, taxpayers could face uncertainty in determining how to appropriately disaggregate shared costs and assess compliance under material assistance rules.

Proposed solutions: Treasury and the IRS should clarify the MACR methodology for hybrid projects, providing more details in forthcoming guidance as to how taxpayers should allocate shared or common costs for the purposes of MACR analyses with respect to co-located property, such as interconnection equipment and balance-of-system components.

To promote consistency and administrability, Treasury and the IRS should consider the establishment of a safe harbor framework and/or clear and binding illustrative examples for common hybrid configurations and the requisite MACR methodology. To that end, Treasury and the IRS should prioritize existing regulatory approaches while maintaining taxpayer optionality.

[5] Legacy aggregation principles have historically not applied in a PTC context.

[6] RIN 1545-BR17, final regulations on the § 45Y Clean Electricity Production Credit and § 48E Clean Electricity Investment Credit.

In this context, one streamlining option may include providing taxpayers with the flexibility to aggregate “like-categories” and “like-classes” of qualified facilities (e.g., multiple solar arrays) for the purposes of MACR calculations, but continue treating such facilities as separate (i.e., from co-located EST) when determining credit eligibility.

Feedback on Specific Questions Presented in Notice 2026-15

1. ***With respect to determining the Total Direct Costs to the taxpayer attributable to all MPs (including MPCs) that are incorporated in the qualified facility or EST upon completion of construction under § 7701(a)(52)(D)(i)(I)(aa), is any further guidance needed to clarify how to determine “Total Direct Costs”?***

   Yes. While the Notice provides a useful framework by focusing on the taxpayer’s acquisition costs rather than the costs of upstream suppliers, additional clarification from Treasury and the IRS would improve the administrability and compliance.

   Specifically ACORE’s membership would appreciate confirmation that Total Direct Costs include only those paid or incurred by the taxpayer, additional examples of direct costs, guidelines for allocation of indirect costs and costs for shared property, and clarification regarding which definition of direct costs applies if there is a differentiation according to the MACR scenario (e.g., direct labor costs should be included in MACR calculations for qualified facilities but not for eligible components).

2. ***If guidance is needed to clarify how to determine Total Direct Costs:***

   a. ***What would be the best standard to apply with respect to qualified facilities and ESTs under §§ 45Y and 48E? For example, does the standard that is based on a taxpayer’s direct costs under § 1.263A-1(e)(2)(i)(A) and (B) (that is, direct material and direct labor costs that are paid or incurred by the taxpayer within the meaning of § 461) capture the appropriate costs?***

   Notice 2026-15 references both IRC § 1.263A-1(e)(2)(i)(A), as well as 26 CFR 1.471-3 and notes that costs such as, “freight-in and tariffs paid or incurred by the taxpayer generally are direct material costs.”

   In general, a standard based on the taxpayer’s direct costs under § 1.263A-1(e)(2)(i)(A) and (B) may be appropriate for determining Total Direct Costs. However, Treasury and the IRS should clarify how taxpayers should apply this framework under §§ 45Y, 48E, and 45X, respectively. For example, a more detailed explanation would be particularly useful as it concerns situations in which a taxpayer *acquires* a Manufactured Product (“MP”) rather than produces it; § 3.01(4)(a) of the Notice indicates that the taxpayer’s costs would simply be its acquisition costs with respect to the MP, while the direct costs, including direct labor costs, of incorporating the MP into the qualified facility or EST would be disregarded. This is a straightforward approach, but the Notice does not offer more detailed guidance on how taxpayers should attribute a portion of their

acquisition costs to any PFE-produced Manufactured Product Components ("MPCs") within a taxpayer-purchased MP. A comprehensive definition of acquisition costs, including illustrative examples in the latter context, would support industry compliance.

In short, the reference to § 1.263A-1(e)(2)(i)(A) and (B) is a positive step in directing taxpayers to an established framework, but the lack of uniformity in how the Notice applies it to various prongs of Material Assistance analysis warrants enhanced clarity in forthcoming guidance.

b. Should the rules for computing Total Direct Costs applicable to a taxpayer that purchases an MP or MPC be different than the rules for computing Total Direct Costs applicable to a taxpayer that mines, produces, or manufactures an MP or MPC?

Consistent with our general principles outlined above, ACORE respectfully requests that the same core framework be made to apply in both cases, with Total Direct Costs representing only the direct costs paid or incurred by the taxpayer in producing or acquiring the relevant property.

3. What rules are necessary to prevent the circumvention of the rules and restrictions with respect to PFEs consistent with the purposes of the PFE and material assistance rules added by the OBBBA?

The U.S. clean energy sector is committed to supporting the national security and economic objectives of the OBBBA. In recent years, the industry has made substantial strides in developing domestically produced items such as solar cells and modules, batteries, and other key components for energy infrastructure projects.

Further, existing rules such as Beginning of Construction Safe Harbors and others have helped industry to develop a robust private sector compliance and oversight framework. For example, as ACORE outlined in its issue brief "The Role of Safe Harbor for Energy Tax Credits: Guardrails, Not Loopholes",[7] each clean energy infrastructure project must proceed through numerous steps in the project development process. These include initial site selection, design, and engineering, permitting, and interconnection approvals. Projects that successfully navigate these steps will typically be positioned to enter into multi-year contracts known as power purchase agreements ("PPAs") with a utility or corporate offtaker. Meeting these milestones requires substantial private capital to be secured and deployed before the federal clean energy tax credits are claimed, though tax considerations factor into the overall project's financial planning. As outlined further in the ACORE issue brief, each stakeholder has a vested interest in ensuring that a project meets all necessary criteria to ensure that it is completed, interconnected, and generates affordable, reliable electricity for American consumers.

While the PFE and material assistance requirements imposed under OBBBA represent new issues for the industry to consider as part of the robust diligence process, clear and timely guidance from

---

[7] *See* ACORE issue brief, (August 12, 2025), available at: The Role of Safe Harbor for Energy Tax Credits: Guardrails, Not Loopholes.

Treasury and the IRS will allow industry the ability to successfully take these matters into account in the project development and financing processes and diligence that currently exist.

Given the broad, changing, and ongoing nature of these new compliance obligations Treasury and the IRS should consider establishing appropriate cure procedures for PFE noncompliance. A well-delineated cure process will encourage taxpayers to proactively seek review when potential issues have been identified and keep the Department further informed of emerging fact patterns and industry compliance challenges.

Lastly, Treasury and the IRS should consider the interaction between OBBBA and existing federal rules, regulations, and compliance pathways that can contribute to effective implementation. For example, industry stakeholders in highly regulated sectors such as public utilities and banking are subject to numerous disclosures, due diligence, and other requirements and oversight that meet similar objectives to OBBBA and can be leveraged to minimize additional taxpayer compliance burden. However, in the event that changes to existing standards and regulations occur, any such changes should be applied on a purely prospective basis and afford taxpayers appropriate time to adjust, as the introduction of new requirements will likely require taxpayers to amend or replace contractual arrangements with third parties.

4. ***What substantiation and documentation, in addition to the records required under § 6001, should be required to support compliance with the anti-circumvention rules under § 7701(a)(52)(D)(v)(II), such as to demonstrate that beginning of construction of a qualified facility or EST has occurred for purposes of the PFE and material assistance rules added by the OBBBA?***

   Forms 7211 ("Clean Electricity Production Credit") and 3468 ("Investment Tax Credit") already require taxpayers to include the "Date Construction Began" as well as the placed in service date. In addition, these forms, as well as Form 7202 ("Advanced Manufacturing Production Credit") require information related to the taxpayer, information about the project, and other information. The application of IRC § 6001, and the six-year window for potential penalties under IRC § 6696, require taxpayers to retain additional information to substantiate their claims.

   Should additional information beyond these existing requirements be determined to be necessary for taxpayer compliance, Treasury and the IRS should consider revising and updating the existing forms and instructions, and any additional information requests should be prospective in nature. Treasury and the IRS should seek to utilize the extensive information presently collected in taxpayers' diligence processes, rather than require the creation of new or duplicative documentation systems.

Conclusion

ACORE appreciates the work of Treasury and the IRS to advance the effective implementation of the OBBBA, including via the issuance of Notice 2026-15, which represents a meaningful step toward

ACORE

providing needed business certainty that, in turn, will serve to minimize risk of circumvention or abuse, and help to facilitate sound tax administration.

Continued, timely action to address the outstanding issues identified herein will be essential to meeting the statute's critical objectives while supporting investments to fulfill the nation's growing electricity needs, and ACORE stands ready to serve as a resource for Treasury and the IRS in that effort.

/s/ Lesley Hunter
Lesley Hunter
Senior Vice President, Policy & Engagement
ACORE
1150 Connecticut Ave NW, Suite 401
Washington, D.C. 20036
hunter@acore.org
(202) 963-1914

/s/ Jeremy Horan
Jeremy Horan
Vice President, Government Affairs
ACORE
1150 Connecticut Ave NW, Suite 401
Washington, D.C. 20036
horan@acore.org
(202) 843-1987