



March 30, 2026

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2026-15)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: 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

Sent via the Federal eRulemaking Portal at: <https://www.regulations.gov/>

Dear Sir or Madam:

The Large Public Power Council (“LPPC”) submits these comments on 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 (the “Notice”).

LPPC is a national organization comprising 29 of the nation’s largest public power systems (the “Members”) and over 80 percent of the assets of public power utilities nationwide. LPPC’s Members are locally owned and governed not-for-profit electric utilities committed to the people and communities they serve. LPPC advocates for policies that allow public power systems to build infrastructure, invest in communities, and provide reliable service at affordable rates. From New York to California and Washington State to Florida, LPPC Members provide reliable, low-cost electric service to more than 30 million people and represent a cross-section of the nation’s utility industry, owning and operating 50,000 circuit miles of high voltage transmission lines and 80,000 megawatts of electric generation capacity.

We appreciate the efforts of Treasury and the IRS to develop guidance for the foreign entity of concern (“FEOC”) framework created by the One, Big, Beautiful Bill Act. We also recognize that the FEOC framework is intended to strengthen domestic supply chains and reduce reliance on geopolitical adversaries. However, based on the experience and supply chain expertise of our Members, we are providing these comments to bring to Treasury’s attention areas where additional clarification or refinement of the guidance provided in the Notice would help ensure that the FEOC framework can be practically implemented by utilities throughout the country.

I. Strengthening the “Certification Safe Harbor” and the “Reason to Know” Standard

The Notice establishes the “Certification Safe Harbor,” which permits taxpayers to rely on supplier certifications either (a) stating the total direct costs attributable to manufactured products (“MPs”) or manufactured product components (“MPCs”) that were not produced or manufactured by a prohibited foreign entity (“PFE”), or (b) certifying that such MPs or MPCs were not produced by a PFE, so long as the taxpayer does not know nor have reason to know that the certifications are inaccurate. As end-purchasers in complex global supply chains, utilities typically lack direct visibility into upstream ownership structures, financing arrangements, and upstream suppliers. Our Members rely on suppliers, often through multiple tiers of a supply chain, to provide accurate information about the origin and production of manufactured products and components. However, as noted above, the Certification Safe Harbor is subject to the statutory limitation in Section 7701(a)(52)(D)(iii)(III) of the Internal Revenue Code of 1986, as amended (the “Code”), that taxpayers may not rely on certifications they “know (or have reason to know)” are inaccurate.

In the context of complex global supply chains, this standard creates significant uncertainty for utilities. We request that Treasury provide additional guidance clarifying what constitutes “reason to know” in this context. Specifically, Treasury should establish a standardized due-diligence safe harbor for utilities that would provide them with conclusive reliance protection if defined verification procedures are followed. Such procedures could include verifying suppliers against published federal FEOC and sanctions lists, obtaining beneficial ownership declarations from direct suppliers, requiring periodic supplier compliance attestations, and maintaining documented records of the utility’s supply chain due diligence efforts. If a utility provides evidence that these standardized due-diligence safe harbor procedures were followed in good faith, such utilities should be entitled to rely on the resulting supplier certifications without risk of credit disallowance based on any subsequently discovered inaccuracies in supplier certifications, provided the utility did not have actual knowledge of such inaccuracy at the time of reliance.

Importantly, this proposed standardized due-diligence safe harbor would not impair Treasury’s enforcement authority. The safe harbor would address only the “reason to know” prong of the statutory standard and would not protect a taxpayer with actual knowledge that a certification is inaccurate. In addition, the statutory requirements that supplier certifications be signed under penalties of perjury and retained for no less than six years would continue to deter and detect supplier fraud. Treasury’s anti-circumvention authority under Section 7701(a)(52)(D)(v) would also remain fully intact. The proposed safe harbor creates a defined compliance pathway for the “reason to know” standard while leaving Treasury’s ability to pursue cases of actual knowledge or deliberate fraud entirely unaffected.

II. Clarifying the Scope of “Effective Control”

The Notice confirms that, pending further guidance from Treasury, the statutory definition of “effective control” applies, including the broad provisions related to licensing agreements under Section 7701(a)(51)(D)(ii)(III)(aa). As the Notice itself acknowledges, any licensing agreement entered into or modified on or after July 4, 2025, can result in a finding of effective control if any one of the conditions enumerated in the statute is satisfied, including merely the fact that such agreement was entered into or modified after July 4, 2025.

To illustrate, under Section 7701(a)(51)(D)(i)(II) of the Code, an entity becomes a “foreign-influenced entity,” and therefore a PFE, if, during the previous taxable year, the entity made a payment to a specified foreign entity pursuant to a contract, agreement, or other

arrangement that entitles such specified foreign entity to exercise “effective control” over a qualified facility, energy storage technology (“EST”), or the production of an eligible component. Section 7701(a)(51)(D)(ii)(III)(aa)(GG) of the Code provides that, with respect to a licensing agreement for the provision of intellectual property (or any related contract, agreement, or other arrangement), the agreement’s having been entered into or modified on or after July 4, 2025 automatically constitutes effective control. This means that if a utility enters into a software licensing agreement for the provision of intellectual property with an equipment manufacturer that qualifies as a specified foreign entity, or modifies such an agreement after July 4, 2025, the specified foreign entity could be deemed to exercise “effective control” over the utility’s facility. The utility itself (not the manufacturer) would then be classified as a foreign-influenced entity (and because of that, a PFE), potentially disqualifying the facility from credit eligibility entirely. At a minimum, Treasury should confirm that this rule applies only where the taxpayer makes a payment to a specified foreign entity, and that a payment to a non-specified foreign entity does not trigger the rule solely because the payee is related to a specified foreign entity.

Even with this clarification, LPPC remains concerned that this effective control rule may inadvertently capture routine operational arrangements that are standard in the utility industry and essential to operating modern grid infrastructure and EST. The broad application of the effective control rule may unintentionally subject routine arrangements, such as software licensing agreements for equipment operation, cybersecurity and firmware update agreements related to such licensing arrangements, equipment monitoring and diagnostic service contracts entered into in connection with IP licenses, and operational data sharing agreements, to scrutiny that can cause a project to lose its tax credit eligibility.

Utilities already must comply with cybersecurity, physical security, and reliability requirements when deploying and operating these systems. Treasury should clarify that routine operational and maintenance arrangements (such as the types described above) do not constitute “licensing agreement[s] for the provision of intellectual property” and do not result in “effective control.” This clarification would prevent unintended restrictions on the adoption of software-enabled grid equipment, avoid potential conflicts between federal tax compliance and mandatory federal grid reliability requirements, and provide certainty for utilities deploying digital energy technologies.

III. Expanding Cost Methodologies and Simplifying MACR Calculations for Large-Scale Infrastructure Projects

As the Notice explains, a taxpayer must compute a separate “material assistance cost ratio” (or “MACR”) for each qualified facility or EST that can function independently from other facilities, and must separately calculate a MACR for qualified interconnection property (“QIP”), if applicable. The Notice distinguishes between two types of MACR calculations: the “Clean Electricity MACR,” which applies to qualified facilities and ESTs under Sections 45Y and 48E and is based on total direct costs of MPs and MPCs, and the “Eligible Component MACR,” which applies to eligible components under Section 45X and is based on total direct material costs of Constituent Materials. Because our Members are end-purchasers deploying qualified facilities and ESTs rather than manufacturers of eligible components, the Clean Electricity MACR is the relevant calculation for purposes of these comments.

The required MACR thresholds are tied to when construction begins: for facilities beginning construction in 2026, the MACR must be not less than 40% for each qualified facility

and not less than 55% for each EST, increasing by 5% each year until reaching maximums of 60% for qualified facilities and 75% for ESTs beginning construction after 2029.

While we appreciate the detailed guidance in the Notice regarding the computation of the Clean Electricity MACR (including the Identification Safe Harbor and Cost Percentage Safe Harbor), those rules remain difficult to apply to large-scale energy infrastructure projects that may contain hundreds or thousands of individual components across multiple units.

The Identification Safe Harbor allows taxpayers to use the 2023–2025 Safe Harbor Tables (from Notices 2023-38, 2024-41, and 2025-08) to identify which items qualify as MPs and MPCs for a given project type, rather than making independent determinations. The Cost Percentage Safe Harbor allows taxpayers to use pre-assigned cost percentages from those same tables to determine Direct Costs and PFE Direct Costs, rather than tracking actual component-level costs. Both safe harbors significantly simplify MACR calculations but are available only for project types listed in the tables. The requirement to calculate a separate MACR for each qualified facility or EST creates a significant burden for tax credit-eligible projects that may contain hundreds or even thousands of components across multiple units. For example, a utility deploying dozens of standardized solar facilities under a single procurement contract must perform individualized cost tracking and MACR calculations for each facility, even where every facility uses the same equipment from the same suppliers.

The Notice already recognizes the impracticality of individualized calculations in analogous contexts, including through the de minimis assignment-based tracking rule described in Section 3.01(3)(b) and the averaging methodology for smaller ESTs (capacity under one megawatt) described in Section 3.01(3)(c), but no comparable relief is currently available for larger standardized deployments of qualified facilities. We request that Treasury consider allowing aggregated or averaged MACR calculations for projects composed of standardized equipment procured under a single procurement contract, or for multiple facilities of the same type placed in service in the same taxable year.

Extending these existing streamlined methodologies to larger standardized deployments of qualified facilities would reduce the burden on our Members while preserving the policy intent of the MACR framework. We also request clarification on the treatment of interconnection property, for which neither the Identification Safe Harbor nor the Cost Percentage Safe Harbor is available, and which may present particular challenges for utilities in determining MACR compliance.

IV. Aligning MACR Compliance Timing with Procurement Realities

Under the statutory framework and the Notice, the applicable MACR threshold percentage is determined by when a facility begins construction, with escalating thresholds from 40% (for facilities beginning construction in 2026) to 60% (for facilities beginning construction after 2029). Our Members often procure major equipment years before project completion, in part due to interconnection queue timelines and long manufacturing lead times for specialized clean energy equipment. This can create a timing mismatch: a utility may commit to equipment under binding contracts well before construction begins, only to find that the applicable MACR threshold at the time of construction start is higher than anticipated when the procurement commitment was made.

We note that the statute already addresses certain procurement-timing concerns through the grandfathering provision in Section 7701(a)(52)(D)(iv), which permits reliance on binding written contracts entered into before June 16, 2025. We request that Treasury provide additional

guidance clarifying how this grandfathering provision applies to utilities with long-lead procurement timelines, and whether the existing statutory framework provides relief for equipment procured under binding contracts at a time when a lower MACR threshold was applicable to the project. Such clarification would reduce the risk of projects becoming non-compliant due to timing mismatches beyond the utility's control and would improve procurement planning certainty for utilities making significant capital commitments.

V. Establishing a Pre-Filing Guidance Mechanism

Given the complexity of the MACR calculations, the breadth of the effective control provisions, and the penalties associated with noncompliance, taxpayers need a mechanism to obtain advance guidance on FEOC compliance determinations. This need is important to tax-exempt entities that monetize credits as applicable entities through elective payment elections under Section 6417 of the Code.

Under Section 6417(d)(6)(D), a disallowance of an applicable credit by reason of overstating the MACR (as described in Section 6662(m)(2) of the Code) triggers the excessive payment rules under Section 6417(d)(6)(A). Those rules require repayment of the excessive amount, impose a 20% penalty absent reasonable cause, and extend the assessment period to six years under new Section 6501(o) of the Code. We therefore respectfully request that Treasury establish a pre-filing guidance mechanism, or a comparable Private Letter Ruling process, through which taxpayers can obtain advance guidance on MACR calculations, effective control determinations, and supplier classification questions. Such a process would promote proactive compliance, reduce audit risk, and provide greater certainty for utilities making large capital investment decisions.

VI. Clarifying Application of the 15% Debt Threshold to Secondary Market Purchases of Municipal Debt

The FEOC rules limit and potentially eliminate federal tax credits for a taxpayer that has too much debt held by certain foreign entities. Specifically, these limits apply to a “foreign-influenced entity,” which includes an entity with respect to which, during a particular taxable year, “at least 15 percent of the debt of such entity has been issued, in the aggregate, to 1 or more specified foreign entities.”¹

LPPC urges Treasury to clarify the application of the 15 percent debt threshold to publicly offered municipal debt. As LPPC explained in its December 15, 2025 letter to Treasury regarding application of the FEOC debt test to publicly offered municipal debt, once municipal debt is issued to the public it is actively traded and widely held, making secondary-market ownership impossible for governmental issuers to monitor or control. LPPC therefore requests that Treasury provide administrable rules that focus the debt test on initial issuance rather than subsequent secondary-market trading, or otherwise adopt tailored rules for publicly offered municipal debt that prevent unintended FEOC exposure arising from trading activity beyond the issuer's knowledge or control. LPPC respectfully incorporates by reference the recommendations set forth in its December 15, 2025 submission.

¹ Code Section 7701(a)(51)(D)(i)(I)(dd).

Conclusion

We appreciate the opportunity to comment on Notice 2026-15. The clarifications and refinements requested above are intended to ensure that the FEOC rules can be practically implemented by the nation's public power utilities, consistent with the statute and the national security objectives underlying the framework. We look forward to continuing to work with Treasury and the IRS as the forthcoming proposed regulations are developed.

Respectfully submitted,

LARGE PUBLIC POWER COUNCIL

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