



Client Note: FEOC Guidance is In, Santos is Out

FEOC Guidance Released

This morning, Treasury ([here](#) and [here](#)) and [DOE](#) released their highly anticipated guidance around the foreign entity of concern (FEOC) rule within the 30D EV tax credit and battery grant program (DOE's rule defines FEOC and Treasury's rules outline the enforcement side). As we mentioned earlier this week, the FEOC rule is designed to prevent EV tax credit eligibility for vehicles with batteries, or critical minerals, that are sourced from entities that are "owned or controlled by" China, Russia, Iran, or North Korea. China is the main focus given its particularly strong role in battery and critical minerals processing and manufacturing.

At a high level, the rules prevent EVs from being eligible for the tax credit if the battery (starting in 2024) or minerals (starting in 2025) were sourced from an entity that is either 1) "incorporated in, headquartered in, or performing the relevant activities" of manufacturing in one of the four banned nations, or 2) "owned by, controlled by, or subject to the direction" of a banned nation – defined as having at least 25% of the board seats, voting rights, or equity in the company. Importantly, a technology licensing agreement with an FEOC does not inhibit a company from getting the EV tax credit, as long as it conforms to the criteria that FEOCs must not have "effective control" of the production of the battery materials or minerals, with a specific list of contract requirements to prove this.

Given the significant battery supply chains that are still reliant on China, we do not expect every manufacturer to be able to fully comply with the rule, meaning there is likely to be a contraction in the number of vehicles that are eligible for the EV tax credit. While [some have noted](#) that this rule is stricter than other FEOC interpretations that apply elsewhere in the government, Senator Joe Manchin (D-WV) came out [swinging](#) today decrying the rule as not nearly strict enough. The industry's response thus far has been that the rule is tough, but fair, and at least gives companies a chance to effectively respond to and try to meet the test of the onshoring/friendshoring goals of the FEOC policy.

Santos Expelled From House

Also this morning, the House kicked out Rep. George Santos (R-NY) with a vote of 311-114; 105 Republicans joined nearly all Democrats to vote yes. While this was the expected outcome, there were some last-minute concerns that enough of the House Freedom Caucus and others with process concerns might vote no to keep save him – and the margin of error ultimately wasn't huge, as a two-thirds majority (~290) was needed for the expulsion to go through.

EU's Domestic Energy Push Makes Progress

While the U.S. used the Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act (IRA) to make monumental investments in its domestic manufacturing, supply chain, and energy production, the E.U. has not only been taking notes, but may even be ahead on reforms such as integrating markets and improving the energy permitting processes. Last week, the European Parliament passed the [Net-Zero](#)

[Industry Act](#), which incentivizes domestic manufacturing of clean energy technologies by including fast-track permitting, procurement flexibility (including roadblocks for adversaries), and simplification of their regulatory frameworks. The legislation also makes efforts to reduce Europe's dependence on Russia and China. And although Europe's allocated funding is small compared to the recent investments by the U.S., the effort indicates more cohesiveness on tricky issues, such as permitting, by mandating one-stop shops that facilitate and coordinate the entire process, while issuing comprehensive decisions within the applicable time limits.

The developments in Europe come alongside [other ambitious efforts in Canada](#) to accelerate timelines for tax credit financing opportunities and [efforts between](#) the U.S. and Canada to overcome EV mineral sourcing challenges as China expands its export controls.

Other Congressional Progress

Here's a quick update on some of Congress's to-dos we outlined on Monday:

- There are [reports](#) that the House/Senate compromise version of the National Defense Authorization Act (NDAA) will come next week, setting it up for passage before the end of the year.
- Similarly, we've heard that there is movement in the Senate on the reauthorization of the Federal Aviation Administration (FAA), and [some have speculated](#) it could even get attached to the NDAA (though others [shot that idea down](#), saying the FAA politics were too messy for the NDAA).
- News about the Foreign Intelligence Surveillance Act (FISA) reauthorization has picked back up, with [Speaker Mike Johnson \(R-LA\) suggesting](#) in a meeting with Senate Republicans that he'd like to pass a clean extension until early next year to align with government funding, tied to the NDAA as well. Others (including those worried about FISA's impact on privacy) say that the only path forward is with a full reauthorization that addresses their concerns

Funding Opportunities

DOE [announced](#) \$10 million in funding for R&D projects that prototype and mature technologies or processes to address critical material challenges. Technologies of interest include those using magnets with reduced critical material content, and processes that improve manufacturing, recovery from scrap and post-consumer products, and reduced demand for critical materials in clean energy components. Concept papers are due January 5.

Lastly, the Department is [requesting feedback](#) on technologies that advance commercial building decarbonization and concept papers for a [\\$30 million funding opportunity](#) for R&D projects that decarbonize buildings by December 8th and 13th, respectively.

Clients in the News

HASI CEO Jeffrey Lipson [spoke with CNBC](#) to discuss the investability of solar, where he said that the energy transition is long-term, and short-term volatility is not reflective of the future of energy.

Universal Hydrogen CTO Mark Cousins was [highlighted by a BBC article](#) on the UK's future sustainable-aviation needs, citing the company's field cell modules which can be transported to and from the airport.

Next Week: [Hearings to Watch](#)

Tuesday, December 5

Senate Finance

“Drug Shortages: Examining Supply Challenges, Impacts, and Policy Solutions from a Federal Health Program Perspective”

(10:00 AM EST), watch [here](#)

Wednesday, December 6

Senate Banking

“Annual Oversight of Wall Street Firms”

(9:30 AM EST), watch [here](#)

Senate EPW

“IIJA Investments in Habitat and Ecosystem Restoration, Pollinators, and Wildlife Crossings”

(10:00 AM EST), watch [here](#)

House Oversight Subcommittee on Cybersecurity, IT, and Government Innovation

“White House Policy on AI”

(2:00 PM EST), watch [here](#)

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