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Tax Insurance

Tax Credit Insurance Q4 2025 Market Update

Tax Insurance Practice

Tax insurance is a risk management tool protecting against tax loss arising from one or more transactions, investments, or events.

Executive Summary

- The tax credit insurance market (the, "Market") is actively responding to the enactment of the One Big Beautiful Bill Act ("OB3") and evaluating IRS Notice 2025-42 ("Notice 2025-42").
- The Market is well positioned to provide coverage for the beginning of construction rules in Notice 2025-42.
- CAC recently conducted a Market survey. Key survey findings include:
  - Appetite for step-ups continues to contract;
  - Strong preference for single asset transactions over portfolio style transactions; and
  - Hybrid representation and warranty insurance ("RWI") and tax insurance policies are available in limited circumstances.

With the enactment of OB3, partnering with a sophisticated tax insurance broker, who has a strong grasp of the Market is more critical than ever — especially as coverage tightens.

CAC is actively working with stakeholders to emphasize the importance of integrating tax insurance early in the financing process to help secure smooth placements with the most favorable terms.

Pricing

The upward pressure on pricing, first observed in late 2024, has continued. This shift is driven less by changes in the risk profile of insured projects and more by limited underwriter bandwidth amid surging demand.

Smaller transactions have been disproportionately affected, as carriers raise minimum premiums required to underwrite a policy — causing pricing to represent a much larger percentage of total deal value. By contrast, larger transactions remain better positioned as these deals benefit from reduced pricing when utilizing excess capacity.

(This chart illustrates premium rate movement relative to the average primary rate on line during the applicable period. It is intended to show general Market pricing trends and does not predict specific outcomes.)

OB3

OB3 introduced sweeping tax reforms, reshaping how underwriters assess risk in the Market. Specifically, it introduced complex compliance requirements under the Foreign Entities of Concern (FEOC) rules and imposed a rapid sunsetting of Sections 45Y and 48E tax credits.

Since the first draft of OB3 circulated the House, the Market has been actively responding. CAC has been working closely with underwriters and clients, navigating both the evolving Market conditions and the legislative changes introduced by the legislation.

Tax credit insurance will continue to evolve rapidly in response to OB3 and transactions involving emerging technologies. As these sectors expand, CAC expects insurers to develop specialized underwriting frameworks to address novel risks — such as supply chain traceability under the FEOC rules — enabling broader access to capital through enhanced transaction certainty.

Wind and Solar Energy (Sections 45Y and 48E)

Under OB3, to qualify for credits under Sections 45Y and/or 48E without reduction, certain wind and solar projects that begin construction for tax purposes after July 4, 2026, must be placed in service by December 31, 2027.

Projects that began construction before July 4, 2026, will qualify for full credits if the project is placed in service during a 4-year "Continuity Safe Harbor" or later if the "Continuous Efforts" or "Continuous Construction" test is satisfied.

Notice 2025-42

On August 15, 2025, the IRS released Notice 2025-42, providing updated guidance on determining whether a project began construction before July 4, 2026, for purposes of the sunsetting provisions enacted under OB3 for Sections 48E and 45Y tax credits.

Notice 2025-42 largely reaffirms existing rules under the "Physical Work Test" and "5% Safe Harbor." However, it makes a significant change by eliminating the "5% Safe Harbor" for wind and solar projects with a nameplate capacity greater than 1.5 MWac.

Insuring Beginning of Construction

The date construction of a project began is important for multiple reasons — determining eligibility under Section 48/45 versus 48E/45Y, applying prevailing wage and apprenticeship ("PWA") grandfathering rules, qualifying for the energy community adder, and now complying with the FEOC rules and the sunsetting provisions of OB3. Given the similarity of the rules in Notice 2025-42 to prior guidance, the Market is well positioned to underwrite policies insuring beginning of construction under the new framework.

Generally, obtaining coverage for beginning construction risk requires written advice from tax counsel with thorough analysis of the beginning of construction guidance and supporting documentation. For less common off-site and on-site physical work strategies, a more robust work product explaining the strategy may be required. For example, where off-site work on equipment is relied upon to satisfy the Physical Work Test, underwriters may expect to be analogized to the established transformer strategy.

Foreign Entities of Concern

The complexity of the FEOC restrictions continues to create uncertainty around insurers' willingness to offer tax insurance coverage for FEOC-related risks. CAC does not expect the Market to get comfortable underwriting FEOC risks until further guidance is issued by the administration. Nonetheless, certain underwriters indicated a willingness to consider FEOC coverage where transactions are supported by robust analysis and appropriate documentation.

CAC's Tax Insurance Market Survey

CAC anticipated a rapid and dramatic shift in the Market earlier this year, leading to CAC's May 2025 Market Update. Following the passage of OB3, CAC undertook its third Market survey of 28 underwriters to further gauge market conditions and proactively advise clients.

Drawing on CAC's experience over the past five years, the latest Market survey goes beyond cataloging which types of credits are being insured. The survey reflects the pressure points between deal parties when negotiating tax insurance requirements.

From the insights gathered through the market survey, which closely reflects broader expectations and market experience, CAC strengthened its ability to advise clients and strategically match them with underwriting partners best suited to their transaction profile.

Retroactive Change in Law

Historically, tax credit insurance policies excluded losses caused by a change in law ("CIL") only if the change occurred before a project was placed in service. In practice, this meant that prospective CIL risk was excluded, but retroactive CIL risk remained covered. Following the 2024 presidential election, several underwriters revised this exclusion to exclude loss unless the project was placed in service before the effective date of the CIL — eliminating coverage for retroactive CIL. By 2025, this approach had become the prevailing Market standard, with only a small number of underwriters offering retroactive CIL coverage.

After the enactment of OB3 and the release of Notice 2025-42, however, some underwriters reintroduced coverage for retroactive CIL.

CAC's Market Survey Findings:

- Ten underwriters are willing to provide retroactive coverage.
- Most underwriters are prepared to provide retroactive coverage on an excess basis, even if unwilling to do so as the primary underwriter.

CAC Advantage:

By tracking these shifts in real time and maintaining deep relationships with the underwriter community, CAC helps clients identify the limited but valuable opportunities to secure retroactive CIL coverage — whether on a primary or excess basis.

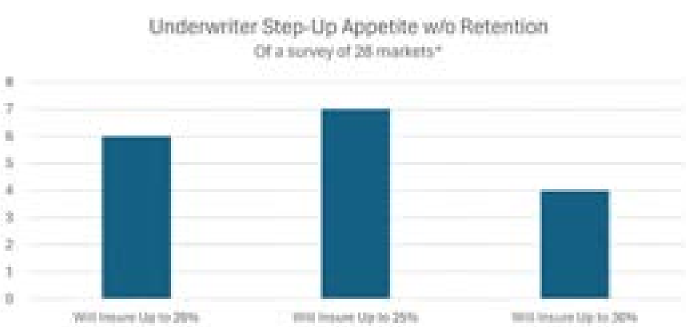
Step-up / Developer Profit

Underwriters' appetite for step-up risk above certain thresholds continued to contract through Q3 2025. Even with third-party appraisals supporting valuations, most underwriters remain unwilling to provide primary coverage for projects with step-ups greater than 25% over cost. For portfolios, step-ups are assessed on a project-by-project basis rather than at the portfolio level.

As noted in CAC's [May 2025 Market Update](), some underwriters with a step-up threshold may, in limited cases, offer coverage above their step-up threshold. However, such terms typically include a retention (deductible) calculated as: (i) the project's concluded FMV, less the FMV at the underwriter's step-up threshold, (ii) multiplied by the applicable ITC percentage.

CAC's Market Survey Finding:

- The most common threshold cited by underwriters was 25%.
- Only four underwriters are willing to provide primary terms without a retention for step-ups above 25%.
- Competition is stronger for projects with step-ups of 25% or less.



*11 do not offer primary terms for step-up coverage.

(This chart reflects general underwriting tendencies and is not determinative of any specific outcome. Each risk is assessed individually based on its facts and circumstances. Consult CAC to evaluate how your valuation risk aligns with current market appetite.)

CAC Advantage:

Despite tightening risk appetite, by leveraging its deep underwriting relationships and structuring expertise, CAC successfully placed insurance for transactions with step-ups above typical Market thresholds. CAC anticipates underwriter concerns and presents well-supported valuations to the Market, allowing clients to achieve coverage where others may not. For sponsors navigating higher step-up transactions, CAC's Market insight and advocacy provide a critical edge in securing competitive terms.

Portfolio vs. Single Project Assets

Underwriters' appetite for portfolios of assets (excluding residential solar) continues to decline relative to single-asset transactions. While portfolios inherently offer diversified risk, the trend reflects the opportunity cost of underwriting portfolios versus stand-alone assets.

In practice, underwriters and their counsel are not realizing meaningful efficiencies when underwriting large portfolios prior to binding coverage. Moreover, portfolios often involve periodic sales of project tranches or tax credits, requiring bring-down diligence before each funding.

As a result, many underwriters have tightened their parameters and increased pricing for portfolio submissions, while others have exited this segment of the Market altogether.

- Premiums and underwriting fees for portfolios remain elevated. Insureds should expect:
- Minimum underwriting fees of approximately $150,000 for portfolios (excluding residential solar); and
- Additional underwriting fees of $15,000–$30,000 for each bring-down diligence event or policy amendment post-binding.

CAC's Market Survey Findings:

- Most underwriters avoided setting a strict cut-off, but portfolios with more than 5 projects are significantly less likely to receive proposals.
- Factors that improve underwriter appetite for larger portfolios include:
  - Minimal or no step-up;
  - Low natural catastrophe (NatCat) exposure; and
  - Uniformity across the portfolio (same EPC, O&M, and offtake agreements; consistent insurance and engineering reports; and aligned valuation/cost segregation methodologies).

CAC Advantage:

Although portfolio placements present challenges, CAC successfully structures coverage by aligning submissions with underwriter preferences. By streamlining diligence, leveraging standardized documentation, and strategically matching clients with receptive underwriting partners, CAC maximizes the likelihood of securing terms for multi-asset portfolios.

CAC's proactive engagement with underwriters ensures clients pursuing portfolio transactions benefit from a smoother placement process and more competitive outcomes.

Hybrid RWI and Tax Coverage

Market appetite for hybrid representation & warranty (RWI) and tax insurance policies has declined noticeably. Historically, these solutions offered buyers and tax equity investors a streamlined way to cover both representations and warranties and known tax risks under a single policy. However, the added complexity of underwriting such policies — combined with limited underwriter bandwidth — led many insurers to exit this segment of the Market. While hybrid policies remain possible in select situations, they are now considerably more expensive. For transactions where a hybrid RWI and tax policy is required, CAC strongly recommends engaging a broker as early as the term sheet stage. Early involvement is critical to aligning expectations among deal parties and ensuring that the submission fits within the limited parameters of current Market appetite.

CAC's Market Survey Findings:

- Only four underwriters indicated a willingness to consider providing a hybrid RWI and tax policy, compared to eight at this time last year.
- Among these four underwriters:
  - None are willing to insure step-ups above 25%;
  - One will not insure step-ups above 20%;
  - Two have limited appetite for portfolios of projects; and
  - One is unwilling to insure portfolios of projects at all.

CAC Advantage:

As hybrid RWI and tax insurance policies become increasingly rare, CAC's expertise and market access provide a distinct advantage. By engaging underwriters early, streamlining submissions, and navigating the tight parameters around step-up thresholds and portfolio risk, CAC maximizes the chances of securing hybrid RWI and tax coverage where required.

CAC'S Insights:

CAC's strong presence in the Market enables its tax practice to remain at the forefront of evolving conditions.

CAC actively shapes the Market by driving competitive terms and pricing on behalf of its clients. Leveraging deep relationships with underwriters and counsel, CAC provides strategic guidance and efficiently aligns clients with insurers whose risk appetite best matches their transaction profile.

CAC's goal is to foster true trading partnerships between insureds and insurers — eliminating execution risk and ensuring smooth closings.

As recognized thought leaders in tax insurance, CAC takes a proactive approach to advising both clients and tax practitioners on market developments. If you would like to discuss how the insights in this update may impact a current or future transaction, please reach out to a member of the CAC tax practice.

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About CAC Group

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