



Updated November 19, 2024

Committee on Foreign Investment in the United States (CFIUS)

The Committee on Foreign Investment in the United States (CFIUS) is an interagency body chaired by the Secretary of the Treasury. It serves the President in overseeing the potential national security risks of certain foreign direct investment (FDI) in the U.S. economy. CFIUS jurisdiction includes the review of mergers, acquisitions, and takeovers that could result in foreign control of a U.S. business; certain noncontrolling investments in businesses involved in critical technologies, critical infrastructure, or sensitive personal data (so-called “TID U.S. businesses”); and certain real estate transactions. At the recommendation of CFIUS, the President may suspend or prohibit transactions that threaten to impair U.S. national security.

The United States is the world’s largest foreign investor and recipient of FDI. U.S. policy has supported a rules-based and open investment environment domestically and globally to promote U.S. economic growth and ensure the U.S. position as a premier FDI destination. Amid this backdrop, CFIUS has reviewed a small subset of foreign investment with an exclusive focus on national security. The focus of CFIUS’s national security actions has evolved over time in response to emerging issues and concerns. Congressional focus on CFIUS has intensified since 2016 amid growing attention to the potential national security ramifications of investments by firms directed, controlled, or funded by a foreign government, notably the People’s Republic of China (PRC), and in strategic sectors. Members have focused on oversight of CFIUS reforms mandated by Congress in 2018 and a variety of legislation that seeks to address perceived gaps in CFIUS’s jurisdiction and actions.

CFIUS Authorities and Composition

CFIUS derives its authorities from Section 721 of the Defense Production Act (DPA), as amended (50 U.S.C. §4565), and implementing regulations (31 C.F.R. Chapter VIII). CFIUS initially was created and operated through a series of executive orders. In 1988, Congress passed the “Exon-Florio” amendment to the DPA (50 U.S.C. App. §2170), which codified the review process, at the time largely driven by concerns over Japanese firms’ acquisitions of U.S. defense-related firms. In 2007, amid concerns over the proposed purchase of commercial operations of six U.S. ports by a firm based in the United Arab Emirates, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49), which formally gave CFIUS statutory authority.

In 2018, Congress passed the Foreign Investment Risk Review Modernization Act (FIRRMA, Title XVII, P.L. 115-232), which expanded CFIUS’s jurisdiction and review process in key ways. FIRRMA was intended to “strengthen and modernize” CFIUS and enhance its ability to address concerns involving nonpassive, noncontrolling investments (e.g., minority stake) in TID business and real estate transactions (e.g., land purchase) in proximity to military

installations, or part of maritime ports or airports. Foreign investors with ties to countries that are part of the “five eyes” alliance—Australia, Canada, New Zealand, and the United Kingdom—may be exempt from some of the rules.

CFIUS consists of nine members: the Secretary of the Treasury (chair); Secretaries of State, Defense, Homeland Security, Commerce, and Energy; Attorney General; U.S. Trade Representative; and Director of the Office of Science and Technology Policy. The Secretary of Labor and Director of National Intelligence (DNI) are non-voting, ex officio members. Five White House offices observe or participate in CFIUS, as appropriate (e.g., the Council of Economic Advisers and National Security Council). The President can appoint other officials to serve on a case-by-case basis.

CFIUS Review Process

The review process begins with notification to CFIUS by the parties to the transaction, which is a voluntary step except in certain cases. Even when notification is not mandatory, firms have an incentive to do so to receive potential “safe harbor” from CFIUS, which limits future action on a transaction after its cleared. Non-notified transactions remain subject indefinitely to future CFIUS review and possible divestment or other actions mandated by the President. As directed by FIRRMA, CFIUS has increased attention and resources to monitoring non-notified transactions of concern. CFIUS may also unilaterally initiate a review.

The President can exercise authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he/she finds that (1) credible evidence exists that the foreign person might take action that threatens to impair national security, and (2) no other laws provide “adequate and appropriate authority” to protect the national security risks.

Notification. A party’s filing of a transaction can be submitted as: (1) a declaration (an abbreviated, short-form filing (30-day assessment) or (2) a traditional written notice (45-day review). Declarations and notices are distinguished by submission length, timeline for CFIUS’ consideration, and CFIUS’s options for disposition of the submission. Filing is mandatory in select cases where a transaction involves (1) a foreign government acquiring a “substantial interest” in a TID U.S. business, and (2) a TID U.S. business that produces, designs, manufactures, etc. a critical technology subject to export licensing/controls.

National Security Review. Treasury and a co-lead agency conduct a 45-day review to determine the effects of the transaction on U.S. national security, informed by a DNI threat analysis. CFIUS’s “risk-based assessment” considers the threat, vulnerabilities, and consequences to national security related to the transaction. In its assessment, CFIUS

is to consider an illustrative list of national security factors. Factors laid out in statute include the domestic production needed for national defense; control of domestic industries and commercial activity by foreign citizens; effects on sales of military goods or technology to a country that supports terrorism or proliferates missile technology or chemical/biological weapons; U.S. technological leadership in areas affecting national security; and effects on U.S. critical infrastructure and critical technologies. In 2022, President Biden issued Executive Order (E.O.) 14083 to elaborate and expand on the factors CFIUS is to consider. These include a transaction's effect on the resilience of U.S. critical supply chains and technological leadership; aggregate industry investment trends; cybersecurity risks; and risks to U.S. persons' sensitive data. See CRS In Focus IF12415.

National Security Investigation. The review proceeds to a 45-day investigation if CFIUS finds that a transaction threatens U.S. national security and the risk has not been mitigated; is foreign-government controlled; or would result in foreign control of any U.S. critical infrastructure. A 15-day extension is permitted in the event of "extraordinary circumstances." CFIUS can negotiate and impose mitigation conditions on the parties to address its concerns; a lead agency is tasked with monitoring compliance with such agreements. Treasury issued its first CFIUS Enforcement and Penalty Guidelines in 2022 and regulatory updates in November 2024, emphasizing monitoring and compliance with mitigation measures as priorities.

Presidential Decision. If CFIUS determines a transaction poses unresolved concerns, it may recommend to the President that the deal be prohibited, unless the parties choose to abandon the transaction. The President has 15 days to act. Presidents have prohibited eight transactions to date, the majority in the past decade (**Table 1**). In 2020, President Trump ordered PRC ByteDance Ltd. to divest from musical.ly, a social media firm; this 2017 acquisition formed the basis of U.S. operations of TikTok (see CRS In Focus IF12640). In 2024, President Biden ordered a PRC cryptocurrency mining firm to divest its real estate acquisition/operations near a strategic missile base.

Table 1. Presidential Blocks of Foreign Transactions

Year	U.S. Business	Acquirer	Sector
1990	MAMCO	CATIC	Aerospace
2012	4 wind farms	Ralls Corp. (Sany Group)	Renewables
2016	Aixtron SE	Grand Chip (China IC Fund)	Semiconductor
2017	Lattice	Canyon Bridge Capital Partners	Semiconductor
2018	Qualcomm	Broadcom	Semiconductor
2020	StayNTouch	Shiji Information Technology Co.	Software
2020	Musical.ly	ByteDance	Digital platform
2024	Real estate	MineOne	Crypto mining

Source: Presidential orders.

Recent Activity

CFIUS must report annually to Congress on its activities (**Table 2**). In most years since FIRRMA was enacted, there has been an increase in transactions reviewed. In 2023, CFIUS reviewed 342 filings (109 declarations, 233 notices). CFIUS cleared 83 declarations and requested

parties submit a subsequent notice in 18% of cases. Three declarations involved real estate transactions. More than half of total notices proceeded to an investigation. In 57 cases, parties withdrew the notice during the investigation to address issues, and the majority refiled with CFIUS. CFIUS adopted mitigation measures for 43 notices (18% of total). In 14 cases, parties abandoned the deal after CFIUS was unable to resolve its concerns, or after the parties did not accept the proposed measures.

Table 2. Transactions Reviewed by CFIUS, 2018-2023

	2018	2019	2020	2021	2022	2023
Declarations	20	94	126	164	154	109
Notices	229	231	187	272	286	233
Investigations	158	113	88	130	163	128
Withdrawals	64	30	28	72	87	57
Presidential Decision	1	1	1	0	0	0

Source: CFIUS Annual Report to Congress for CY2023, July 2024.

Issues for Congress

Congress remains engaged in oversight of implementation of FIRRMA and CFIUS activities. Some Members say that, despite FIRRMA, PRC and other state-directed investments require a more proactive and strategic approach. Some are concerned that PRC investments, particularly in emerging tech and new operations, may evade or fall outside current authorities. Some Members have introduced legislation, for example, to expand CFIUS jurisdiction over agricultural land; ban some investments by the PRC and foreign adversaries; and add the Secretary of Agriculture as a member of CFIUS. These efforts stem in part from reports of an uptick in PRC land purchases and Treasury's 2022 decision that CFIUS did not have jurisdiction to review a PRC firm's land purchase in North Dakota near a U.S. Air Force base. (Treasury has since added some military installations subject to CFIUS jurisdiction over real estate). Some in Congress have expressed concerns about other high-profile deals (e.g., the bid by Japan's Nippon Steel for U.S. Steel Corp., reportedly under CFIUS review). Other possible issues facing Congress include:

- How well is CFIUS balancing an open U.S. investment posture with the aim to protect national security? How should CFIUS protect critical technologies in ways that promote competitiveness and a market-driven economy?
- Post FIRRMA, how sufficient are CFIUS's authorities to achieve current and emerging policy objectives? How has E.O. 14083 affected CFIUS reviews in practice?
- There may be incentives to file declarations instead of notices due to their fast turnarounds. What types of transactions is CFIUS clearing through declarations?
- How is the Commerce Department's process of identifying "emerging and foundational technologies" for export controls facilitating or hindering CFIUS reviews of transactions related to such technologies?
- In what ways has CFIUS improved coordination with U.S. allies and partners in information sharing and in investment screening efforts as mandated by FIRRMA?

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