



Regulation of U.S. Outbound Investment to China

Introduction

The U.S. government generally has supported an open investment environment at home and abroad to promote U.S. economic growth, sustain the U.S. position as a premier destination for foreign direct investment, and ensure U.S. competitiveness. The U.S. government's interagency Committee on Foreign Investment in the United States (CFIUS) reviews a small subset of foreign inbound investments, primarily mergers and acquisitions, that could result in foreign control of a U.S. business and raise potential national security concerns. Since 2016, some Members of Congress and legislative proposals have sought to address the potential U.S. economic and national security effects of certain U.S. *outbound* investments to the People's Republic of China (PRC or China) and other countries of concern, including the transfer of U.S. technology and know-how in sensitive or strategic sectors.

In December 2025, Congress enacted the Comprehensive Outbound Investment National Security Act of 2025 ("the act"), as part of the National Defense Authorization Act for Fiscal Year 2026 (Title LXXXV of P.L. 119-60). The act codifies certain aspects of the Department of the Treasury's Outbound Investment Security (OIS) Program—in effect since January 2025 pursuant to Executive Order (E.O.) 14105 of August 9, 2023—while establishing some new, distinct requirements and authorities. The act is the first to set up a specific program that regulates and restricts certain outbound investments, though it remains narrowly targeted on a few specific sectors, activities, and countries. The Trump Administration indicated in 2025 that it was reviewing E.O. 14105 and the OIS Program to "examine whether it includes sufficient controls to address national security threats," and is considering potential modifications following the enactment of P.L. 119-60. The act's provisions are to be in effect for seven years (§8505).

Background and Policy Debate

Since 2016, Congress has led efforts to strengthen U.S. foreign investment review and has considered regulating some outbound investment. Enactment of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA, Title XVII, Sub. A, P.L. 115-232) enhanced CFIUS authorities to review, mitigate, or restrict *inbound* foreign investments in U.S. firms involved in critical technologies, critical infrastructure, or sensitive personal data, and certain real estate transactions. Other proposed provisions—e.g., on U.S. *outbound* investment—were diluted or eliminated during congressional and executive branch deliberations over FIRRMA, following business pressure and other policy considerations. Instead, Members reformed U.S. export controls to regulate some critical and emerging dual-use technologies and technology transfer abroad. Since then, Congress has returned to these investment issues, in part in response to high-profile PRC

greenfield investments in the United States and U.S. investment in China in strategic sectors (e.g., semiconductors and biotechnology). U.S. investments in China have included the creation of research and development centers, production facilities, and joint ventures (JVs) with the PRC government and PRC firms. Some Members say U.S. portfolio investments also support PRC firms in strategic sectors and also should be regulated.

U.S. firms have benefitted from the ability to invest and sell in China as a top global market since the 1990s. Despite the commitments it made to join the World Trade Organization in 2001, however, the PRC maintains policies and practices that require foreign firms to localize production and transfer technology to PRC firms in order to sell or operate in the market. Since 2014, the PRC government has adopted additional industrial policies and economic security measures. Some U.S. business groups have expressed support for the OIS Program's tailored approach, while raising concerns that foreign firms could fill any loss of U.S. market share in China that might result from the new restrictions.

Executive Branch Action

E.O. 14105, issued by President Biden in August 2023, directs the Treasury Department to create a new outbound investment program. The E.O. reiterates an "open investment" posture that promotes cross-border investment, where "not inconsistent" with the protection of national security interests. It asserts that "advancement by countries of concern in sensitive technologies and products critical for... military, intelligence, surveillance, or cyber-enabled capabilities" constitutes an "unusual and extraordinary threat" to U.S. national security. It asserts such countries can exploit U.S. investment and related intangible benefits. Features include

- A two-tiered system that (1) prohibits certain outbound investments involving "countries of concern" and sensitive technologies and products that pose an acute national security risk, and (2) requires notification for investments in technologies with a lower risk profile.
- "Covered national security technologies and products," broadly identified as those in the (1) semiconductors and microelectronics, (2) quantum information technologies, and (3) artificial intelligence (AI) sectors.
- Unlike CFIUS, no case-by-case review of transactions.
- Coverage of investments in "countries of concern," currently defined as the PRC (including Hong Kong and Macau).

Treasury's final rule to establish the OIS Program took effect on January 2, 2025. Treasury stated its approach focuses on investments that "present a likelihood of conveying both capital and intangible benefits," and is

narrowly scoped “to avoid unintended impacts in broader sectors of the U.S. or global economies.”

Covered transactions include acquisition of equity interests in a covered foreign person; certain debt financing; acquisition, leasing, or development of operations, land, property, or assets in a country of concern (i.e., greenfield investments); JVs; and limited partner (LP) investments in a non-U.S. pooled investment fund that the U.S. person knows “likely will invest in a person of a country of concern.” The rule elaborates on a “knowledge standard,” i.e., knowledge a U.S. person must have about the facts and circumstances of a transaction to trigger the obligations.

Excepted transactions include investments in publicly traded securities; certain LP investments in venture capital, private equity or other funds that are \$2 million or less, or made with certain contractual assurances; certain intra-company transactions between U.S. parent firms and controlled foreign entities; equity-based employment compensation; and some transactions in third countries, among others. The Treasury Secretary, in consultation with others, may grant exemptions on national interest grounds.

The program also targets potential loopholes. For example, it prohibits a U.S. person from “knowingly directing” a transaction by a non-U.S. entity (e.g., foreign fund) that the U.S. person knows at the time would be prohibited if undertaken by a U.S. person. The Treasury Secretary may take actions authorized under the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. 1701 *et seq.*) to nullify, void, or require divestment of any prohibited transaction.

Congressional Action

Congress has sought to address what some Members see as statutory, regulatory, and implementation gaps with regard to CFIUS and export controls. Legislative proposals to restrict certain U.S. investments abroad have included notification requirements (S. 2678); prohibitions in key sectors (H.R. 6349); a case-by-case review process broadly similar to CFIUS that some called a “reverse CFIUS” (H.R. 3136); and an entity-based sanctions approach (H.R. 760).

Subtitle C, Title LXXXV of P.L. 119-60 codifies aspects of the OIS Program’s two-tiered system of prohibition and notification requirements by amending the Defense Production Act of 1950 (50 U.S.C. 4501 *et seq.*) (§8521). The sense of Congress calls on the President to exercise authorities in the act to restrict certain U.S. outbound investments in technologies, in the PRC and other countries of concern, that “benefit a foreign adversary’s military modernization efforts, surveillance states, and human rights abuses” in order to prevent harm to U.S. national security and foreign policy interests (§8504). Key aspects include

Expands sectors and countries subject to requirements, but leaves specifics to be determined by regulations. The act expands the countries covered by the OIS Program from China to also include Cuba, Iran, North Korea, Russia, and Venezuela. It expands covered sectors to include high-performance computing, supercomputing, and hypersonic systems. Treasury has rulemaking authority to define the technical parameters of prohibited and notifiable technologies and the specific technologies to be covered.

Defines covered transactions and key terms. The types of transactions covered largely mirror the OIS Program. The act expands a covered transaction to include U.S. persons “knowingly directing” a notifiable transaction by a foreign person. Treasury is granted authority to cover any other transaction (subject to congressional and public consultation requirements) “that is contributing to the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern.” The act may broaden the scope of a covered foreign person subject to Section 8521 by including entities that are “subject to direction or control” of certain entities (such as PRC firms or members of the Communist Party of China) of a country of concern, and not just those that are owned in the aggregate 50% or more. The act authorizes but does not require the Secretary of the Treasury to establish a publicly accessible database that identifies covered foreign persons engaged in a prohibited or notifiable technology.

Exempts additional types of investment activity. Similar to the OIS Program, the act exempts a range of U.S. financial investments, such as stock market listings and certain venture capital and private equity investments. It adds new exemptions, such as *de minimis* investments based on a threshold to be established by Treasury.

Supplements prohibition and notification scheme with sanctions authorities. Subtitle B, Section 8511 of the act authorizes the use of sanctions under IEEPA on certain covered foreign persons with PRC ties (as separately defined in §8512), and requires an annual assessment and report to Congress regarding PRC firms listed on other federal agencies’ lists under other authorities (§8531).

Requires multilateral engagement. The act directs the executive branch to engage multilaterally and coordinate with other countries to effectively implement the provisions and encourage the development of similar mechanisms.

Considerations for Congress

With the enactment of Title LXXXV of P.L. 119-60. Congress has directed Treasury to implement a modified prohibition and notification process for certain outbound investments to countries of concern. The act requires a report to Congress on enforcement actions taken and other aspects by June 2027 and annually thereafter. In conducting oversight, Congress may consider issues such as

- How does Treasury plan to implement the act? Are there plans for revising and issuing new rules?
- Will Treasury establish a process and criteria to add new sectors or activities to the Program? Should Congress expand the scope of the sectors and types of investments covered?
- Some exemptions to the restrictions limit coverage of passive U.S. financial investments involving PRC firms and sectors. Might such exceptions enable U.S. contributions to the development of PRC dual-use (civilian and military) technological capabilities?
- To what extent might the new requirements affect U.S. competitiveness as a destination for investment compared to major economies that lack such regimes?

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