

The Committee on Foreign Investment in the United States (CFIUS)

Considerations for Foreign Direct Investment



**Office of the Chief Counsel
for International Commerce**

**Office of Investment
Security**

**U.S. Department of
Commerce**

What is CFIUS?

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that is authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on U.S. national security. CFIUS is exclusively focused on national security risk and takes action only when other provisions of law do not provide adequate authority to address the risk. CFIUS operates within the broader context of the U.S. open investment environment.

In addition to the summary below, information on the CFIUS process, frequently asked questions, and other resources are available at:
<http://www.treasury.gov/cfius>

FIRRMA Regulations and the U.S. Investment Climate

In August 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) was enacted to strengthen and modernize CFIUS. FIRRMA provides authorities to the President and CFIUS to address national security concerns more effectively, including the ability to review and take action to address any national security concern arising from certain non-controlling investments and real estate transactions involving foreign persons. New regulations published by the U.S. Department of the Treasury to implement FIRRMA became effective in 2020.

Open Investment Policy:

In FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reaffirmed the United States' open investment policy, consistent with the protection of national security.

The United States is one of the most open countries in the world to foreign investors. The United States is also one of the best places to invest, with strong economic growth policies, a strong innovation ecosystem, and a large and highly developed market. The United States maintains a transparent regulatory environment and unparalleled rule of law.

The CFIUS statute and regulations provide clarity to the business and investment communities with respect to the types of transactions that are subject to CFIUS review and the benefits of such review. The CFIUS process, as modernized and strengthened by FIRRMA, enhances investor confidence in our nation's longstanding open investment policy.

Expanded CFIUS Authority:

Prior to the enactment of FIRRMA, CFIUS had the authority to review the potential national security effects of any transaction that could result in foreign control of any U.S. business. FIRRMA expanded CFIUS's jurisdiction to allow CFIUS to also review certain non-controlling investments and certain real estate transactions.

Non-Controlling Investments:

Under FIRRMA, CFIUS is authorized to review certain non-controlling investments (called "covered investments" in the CFIUS regulations), but only if such investment affords a foreign person specified access to information in the possession of, board membership or observer rights in, or involvement in the substantive decision-making of, certain U.S. businesses related to critical technologies, critical infrastructure, or sensitive personal data, each as defined in the CFIUS regulations.

- **Critical technologies:** CFIUS may review certain transactions involving U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. "Critical technologies" is defined to include certain items subject to export controls and other regulatory regimes, as well as emerging and foundational technologies controlled pursuant to the Export Control Reform Act of 2018.
- **Critical infrastructure:** CFIUS may review certain transactions involving U.S. businesses that perform specified functions—owning, operating, manufacturing, supplying, or servicing—with respect to critical infrastructure across subsectors such as telecommunications, utilities, energy, and transportation, each as identified in an appendix to the regulations.
- **Sensitive personal data:** CFIUS may review certain transactions involving U.S. businesses that maintain or collect sensitive personal data of U.S. citizens that may be exploited in a manner that threatens national security. "Sensitive personal data" is defined to include ten categories of data maintained or collected by U.S. businesses that (i) target or tailor products or services to certain populations, including U.S. military members and employees of federal agencies with national security responsibilities, (ii) collect or maintain such data on at least one million individuals, or (iii) have a demonstrated business objective to maintain or collect such data on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services. The categories of data include types of financial, geolocation, health, and identifiable genetic data, among others.

Real Estate Transactions:

FIRRMA also authorizes CFIUS to review certain real estate transactions involving the purchase or lease by, or a concession to, a foreign person of U.S. real estate that is in and/or

around specific airports, maritime ports, and military installations. The relevant airports, maritime ports, and military installations are described in the CFIUS real estate regulations with additional guidance on the Department of the Treasury's CFIUS [website](#). The CFIUS real estate regulations include certain exceptions, for example, real estate that is a "single housing unit" and real estate located in certain "urbanized areas" or "urban clusters," in each case as defined in the CFIUS real estate regulations.

Other Topics:

Foreign Person and Excepted Investor:

FIRRMA does not prohibit investments from any particular country, and investments from all foreign persons remain subject to CFIUS jurisdiction where a transaction could result in foreign control of a U.S. business. As required by FIRRMA, however, the CFIUS regulations create exceptions with respect to covered investments that do not result in control and certain real estate transactions by certain foreign persons, defined as "excepted investors" (or "excepted real estate investors") from certain "excepted foreign states" (or "excepted real estate foreign states") as identified on the Department of the Treasury's CFIUS [website](#). Any such excepted investor must meet specific criteria to qualify for this status.

Declarations:

FIRRMA modernized CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction, including by introducing the concept of a declaration—an abbreviated notification to which CFIUS must respond within a 30-day assessment period—as an alternative to a voluntary notice, which has been the traditional means of filing a transaction with CFIUS. Instructions are available on the Department of the Treasury's CFIUS [website](#).

Process Remains Largely Voluntary:

The CFIUS process remains largely voluntary, where parties may file a notice or submit a short-form declaration notifying CFIUS of a transaction in order to receive a potential "safe harbor" letter (which prevents CFIUS from subsequently initiating a review of a transaction except in limited circumstances).

In some circumstances, filing a declaration or notice for a transaction is mandatory. In particular, the regulations require submission of a declaration for covered transactions where a foreign government is acquiring a "substantial interest" in a U.S. business that is involved in specified ways with critical technologies, critical infrastructure, or sensitive personal data. Additionally, the regulations require filings for certain covered transactions involving U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

There is no mandatory filing requirement for real estate transactions under the real estate regulations. Parties may file a notice or submit a short-form declaration notifying CFIUS of a real estate transaction in order to potentially qualify for a “safe harbor” letter.

Disclaimer:

This chapter does not constitute legal advice. Readers interested in investing in the United States should consult legal counsel.

