

Summary of the Foreign Investment Risk Review Modernization Act of 2018

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) expands the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS) to address growing national security concerns over foreign exploitation of certain investment structures which traditionally have fallen outside of CFIUS jurisdiction. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of covered transactions.

Key Provisions of FIRRMA:

- **Expands the scope of covered transactions**—FIRRMA broadens the purview of CFIUS by explicitly adding four new types of covered transactions: (1) a purchase, lease, or concession by or to a foreign person of real estate located in proximity to sensitive government facilities; (2) “other investments” in certain U.S. businesses that afford a foreign person access to material nonpublic technical information in the possession of the U.S. business, membership on the board of directors, or other decision-making rights, other than through voting of shares; (3) any change in a foreign investor’s rights resulting in foreign control of a U.S. business or an “other investment” in certain U.S. businesses; and (4) any other transaction, transfer, agreement, or arrangement designed to circumvent CFIUS jurisdiction.
- **Declarations**—Provides for an abbreviated filing or “light filing” process through a new “declarations” procedure that could result in shorter review timelines. It also allows CFIUS some discretion to require parties to file with CFIUS before closing a transaction.
- **Expands CFIUS’s timelines**—Expands CFIUS’s review period from 30 to 45 days and allows an investigation to be extended for an additional 15-day period under extraordinary circumstances.
- **Mitigation**—Strengthens requirements on the use of mitigation agreements, including the addition of compliance plans to inform the use of such agreements.
- **Special hiring authority and funding**—Grants special hiring authority for CFIUS and establishes a fund for collection of new CFIUS filing fees.
- **Delayed effective date and pilot programs**—Delays the applicability of some of the bill’s most significant provisions until 18 months following enactment of FIRRMA or 30 days after the Secretary of the Treasury publishes in the Federal Register a determination that the necessary regulations, organizational structure, personnel, and other resources are in place to administer those provisions, whichever is sooner. This section also authorizes CFIUS to conduct pilot programs to implement any authority provided under this bill.

FIRRMA FAQs

General FAQs

- **What is FIRRMA?**

On August 13, 2018, the President signed into law the Foreign Investment Risk Review Modernization Act of 2018, or FIRRMA. FIRRMA strengthens and modernizes the Committee on Foreign Investment in the United States, or CFIUS, a multi-agency government body chaired by the Secretary of the Treasury that reviews foreign investment for national security considerations.

- **Why was FIRRMA necessary?**

By modernizing CFIUS, FIRRMA strengthens the government's ability to protect national security while preserving the longstanding open investment policy of the United States. At its core, FIRRMA expands the scope of transactions reviewable by CFIUS to address more effectively current national security concerns. CFIUS was last updated more than a decade ago and its jurisdiction has remained unchanged in the 30 years since Congress first passed the Exon-Florio Amendment, which created Section 721 of the Defense Production Act of 1950, the statutory cornerstone of CFIUS. Both the nature of foreign investments in the United States and the national security landscape have shifted significantly since then.

- **Will CFIUS continue to focus solely on national security? Does FIRRMA expand CFIUS beyond national security to include economic issues?**

CFIUS remains focused exclusively on national security. CFIUS examines the effects of a transaction and assesses the impact of those effects on the national security of the United States. FIRRMA will help CFIUS protect our national security from emerging risks.

- **To whom does the new legislation apply? Is it country-specific?**

Like prior CFIUS legislation, FIRRMA does not single out any specific country. CFIUS's authorities may be applied to address the national security risks posed by foreign investment in the United States, regardless of where the investment originates.

- **How will FIRRMA affect investment from countries that are allies and partners of the United States?**

The United States has a longstanding open investment policy, and we maintain strong relationships with our allies and partners on investment. We expect FIRRMA to strengthen these relationships by enabling the United States to work more closely with allies and partners on national security issues related to investment. This will enhance confidence in investments made by those allies and partners in the United States now and in the future.

- **Is the United States still open to foreign investment?**

The United States welcomes foreign investment and continues to be one of the most open countries in the world to foreign investors. The United States is also the best place to invest worldwide, having adopted strong economic growth policies—including a new, low corporate tax rate and in the elimination of many ineffective regulations—and maintaining a strong innovation ecosystem and a highly developed market. We expect the CFIUS process, as modernized and strengthened by FIRRMA, will enhance confidence in the Nation’s longstanding open investment policy by continuing to restrict only those foreign investments that pose national security concerns.

- **Can foreign investors still make investments in the United States in the technology industry?**

The United States welcomes foreign investment in the technology industry, and maintains a strong commitment to the rule of law and the protection of intellectual property. The United States provides unique opportunities to tap into advanced research and innovation and a skilled, energized, and optimistic workforce. FIRRMA does not change this. CFIUS will continue to assess, on a case-by-case basis, whether a particular transaction (regardless of industry) poses a risk to U.S. national security.

FAQs Regarding Filings

- **FIRRMA expands the scope of transactions that CFIUS can review. When is the expanded jurisdiction effective?**

Certain provisions of FIRRMA take effect immediately while others, including some related to the expanded scope of CFIUS, will take effect at a later date. CFIUS will provide further guidance in this regard. In the meantime, parties should continue to notify transactions for CFIUS review as provided in CFIUS’s current regulations.

- **My transaction would be subject to a mandatory declaration under FIRRMA. Am I now required to file a declaration with CFIUS?**

Mandatory declarations are not yet required.

- **May I file a voluntary declaration?**

CFIUS is not yet accepting voluntary declarations. Parties should continue to notify transactions for CFIUS review as provided in CFIUS’s current regulations.

- **Have CFIUS’s timelines for reviews changed?**

Yes. The timeline for CFIUS reviews has changed. The review period for any notice accepted after FIRRMA became effective will be a maximum of 45 days, rather than 30 days. CFIUS

intends to confirm the timeline for reviews in its acceptance letters to parties. If an investigation is required, it will commence no later than the end of the 45-day review period prescribed by FIRRMA. Notices that were accepted on or before the effective date of FIRRMA will remain subject to a 30-day review period.

- **Have CFIUS's timelines for investigations changed?**

Not yet. FIRRMA provides for extending investigations from 45 to 60 days in "extraordinary circumstances," which is to be defined in regulations published in the Federal Register. However, CFIUS is not yet implementing extended investigations and will provide guidance on the implementation of this change.

- **Will stipulations be accepted? What is the effect of stipulation?**

Pursuant to FIRRMA, parties may stipulate in a written notice submitted to the Committee that a transaction is a covered transaction and, if a covered transaction, that the transaction is a foreign-government controlled transaction. Any stipulation must include a description of the basis for the stipulation. The Committee expects stipulations will aid in the expeditious administration of cases. However, FIRRMA does not require the Committee to accept the parties' stipulation(s) or description of the basis for a stipulation. CFIUS will be providing guidance on the implementation of stipulations.

- **Do parties now need to pay a filing fee?**

CFIUS is not yet requiring a filing fee. CFIUS will provide guidance on the implementation of filing fees.

- **What are "pilot programs" and how will "pilot programs" change the CFIUS process?**

FIRRMA allows CFIUS to conduct pilot programs to implement provisions of the legislation that are not immediately effective. The scope and procedures of any pilot program will be published in the Federal Register.

- **How long is it going to take to implement FIRRMA?**

Several provisions of FIRRMA take effect immediately, while others may take up to 18 months to take effect. In the meantime, CFIUS has the authority to implement pilot programs, as noted above, and may also issue interim regulations and guidance.