

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 took effect immediately while others, including some related to the expanded scope of CFIUS, will take effect at a later date. On October 11, 2018, the Treasury Department, as chair of CFIUS, published interim regulations implementing a pilot program, as authorized under FIRRMA, to review certain transactions involving foreign persons and critical technologies. This pilot program takes effect on November 10, 2018, and will end no later than the date on which the full regulations implementing FIRRMA become effective and in no event later than the date that is 570 days after the enactment of FIRRMA (i.e., March 5, 2020). In a separate set of interim regulations also published on October 11, 2018, the Treasury Department made certain amendments to 31 CFR part 800 to implement and make updates consistent with certain provisions of FIRRMA. Both sets of interim regulations and related documents are available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

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

The pilot program, which goes into effect on November 10, 2018, requires declarations for certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. All foreign investment that falls within the specific scope of the pilot program is subject to the mandatory filing requirement pursuant to 31 CFR 801.401. Transactions that do not fall within the scope of the pilot program are not required to file declarations at this time.

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

CFIUS is not yet accepting voluntary declarations.

- **Has CFIUS's timeline for reviews changed?**

Yes. The timeline for CFIUS reviews changed upon enactment of FIRRMA. The review period for any notice accepted after FIRRMA became effective will be a maximum of 45 days, rather than 30 days. 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. The interim regulations published on October 11, 2018, amended 31 CFR part 800 to reflect the updated timeline for reviews.

- **Has CFIUS's timeline for investigations changed?**

Yes. The timeline for investigations has been updated to allow the Treasury Secretary to grant one 15-day extension (*i.e.*, extending investigations from 45 to 60 days) in “extraordinary circumstances.” This applies to notices filed on or after October 11, 2018.

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

Yes. Both sets of interim regulations—the regulations implementing the pilot program and the regulations updating part 800—allow for stipulations. In general, a stipulation could expedite review and action by CFIUS because it may streamline certain aspects of CFIUS's review. It may also result in fewer follow-up questions from the Committee. In the case of a pilot program covered transaction filed through a notice, stipulating control will reduce certain information requirements.

Parties submitting a stipulation should be aware that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is covered under the relevant regulations and/or a foreign government-controlled transaction, and parties making a stipulation waive the right to challenge any such determination. Additionally, neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

- **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 were not immediately effective. Information on the pilot program related to critical technologies is available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

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

Several provisions of FIRRMA took effect immediately, while others may take up to 18 months from the date of enactment to take effect. As noted above, the Treasury Department has published interim regulations implementing certain provisions of FIRRMA.