

Guidelines for Completing the Declaration Submission Form for Real Estate Transactions under 31 C.F.R. Part 802

Any party submitting a declaration pursuant to 31 C.F.R. part 802 subpart D must complete a Declaration Submission Form in accordance with the instructions below.

1. Technical Submission Instructions

The party or parties must respond to each item on the Declaration Submission Form, which is available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>, by typing in the relevant information, unless the item is explicitly noted as “*optional*.” All Declaration Submission Forms (and any applicable attachments) must be submitted by email to CFIUS at realestate.declarations@treasury.gov. As specified on the Declaration Submission Form, parties are required to submit certain attachments, which must be separate attachments to the email transmitting the Declaration Submission Form. Parties should provide a table of contents listing all attachments submitted with the Declaration Submission Form, whether as a table within the e-mail submission, or as a separate attachment. Parties must sign the certification required pursuant to § 802.202 (a sample certification is available at <https://home.treasury.gov/system/files/206/Real-Estate-Template-for-certification-to-accompany-declaration.pdf>), and attach a scanned copy to the email transmitting the Declaration Submission Form.

2. Additional Guidance for Completing the Declaration Submission Form Questions

In addition to the instructions on the Declaration Submission Form itself, the guidance below may be helpful for parties in completing the Declaration Submission Form.

1. Parties must list **ALL** foreign person(s) and current holder(s) of interest in the real estate that are parties to, or the subject of, the transaction, and provide the requested information for each. For entities, list the full business name; for individuals, list the full legal name.

Parties must provide an email address for a primary point of contact for purposes of communicating directly with CFIUS. In many cases this will be the name of legal counsel representing each party to the transaction for purposes of this declaration. Parties may also list the email address for a secondary point of contact if desired.

2. Parties must only respond “yes” if all parties to the transaction are submitting the declaration jointly. Note that if the response to Question 2 is “no,” per § 802.402(b), the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 802.501, if the Staff Chairperson determines that the information provided by the submitting party in the declaration is insufficient for CFIUS to assess the transaction.

See also § 802.402(f) and § 802.502(k) regarding filing procedures for transactions in which a U.S. public entity is a party to the transaction.

3. Parties must:
 - a. Provide the rationale for, and nature of, the transaction, including any details

necessary to understand the roles of the parties and the transaction purpose or scope (e.g., bankruptcy or other legal proceedings). Parties must also provide a short description of the structure of the transaction, such as “purchase,” “lease,” or “concession.” Parties must describe whether the foreign person is acquiring a collection of assets or interest in an entity. (Note that where the transaction involves a collection of assets or interest in an entity, parties should be aware of the separate regulations at 31 C.F.R. part 800.);

- b. Provide the total value of the transaction that is the subject of the declaration in U.S. dollars;
- c. Describe the status of the transaction, and provide the actual or expected completion date, as defined in § 802.205;
- d. Include all sources of debt or equity financing for the transaction, including banking institutions, government financing, or other sources and identify any real estate agents or brokers involved.

4. Parties must attach a copy of all definitive documentation of the transaction, or documents(s) establishing the material terms of the transaction, as applicable, to the email transmitting the Declaration Submission Form. In light of the timing set forth under § 802.210(b), parties to transactions relating to covered ports should attach a signed written document.

5. Parties describing real estate that is the subject of the transaction and all applicable covered ports, military installations, or other government facilities or properties may consult <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-real-estate-instructions-part-802> for additional real estate resources.

6. Parties must describe the approximate size and nature of the real estate, including any relevant physical features, as well as the use of the real estate and physical security measures.

7. Parties must describe the plans of the foreign person with respect to the real estate and structures that are or will be on the real estate. Where possible, parties should reference or attach any materials supporting their intended use for the real estate.

8. Parties must describe any leases, licenses, permits, easements, encumbrances, or other grants or approvals, including identifying the parties to such arrangements and whether any involve the U.S. Government.

9. Parties must respond “yes” or “no” with respect to whether the foreign person will be afforded each of the rights or abilities listed in Question 9. If these rights or abilities are not readily apparent in the transaction documents, the parties should consider attaching a supplemental document explaining the basis of these rights or abilities.

10. Parties must provide the full legal name of the ultimate parent of the foreign person. If the foreign person that is a party to this transaction has no parent, as defined in § 802.229, provide the name of the foreign person here.

11. Parties must provide the address and principal place of business, as defined in § 802.232, for the foreign person and its ultimate parent.

12. Parties must provide a pre-transaction organizational chart, and a post-transaction chart, if

<p>different. If applicable, the organizational charts should include legends that clearly explain the use of certain colors, symbols, or lines. Parties should seek to account for all foreign ownership in the real estate that is the subject of the transaction in the organizational charts.</p>
<p>13. Parties must provide the requested information regarding all direct or indirect ownership interests and/or rights of any foreign government in the foreign person’s ownership structure. If inapplicable, indicate “N/A” in response to Question 13.</p>
<p>14. Parties must provide a brief summary of the respective business activities of the foreign person and any of its parents, as applicable. This summary may include a reference to the relevant corporate Website for additional information. Parties should consider including in this summary the type of information often found in corporate brochures or other materials, where applicable, to explain relevant details.</p>
<p>15. Parties may stipulate that the transaction is a covered real estate transaction by responding “yes.” Responding “no” indicates that the parties are not stipulating one way or the other.</p> <p>While a stipulation is not required from parties submitting a declaration, it may help expedite the Committee’s review, and may increase the likelihood of the Committee concluding all action under section 721 with respect to the covered real estate transaction on the basis of the declaration.</p>
<p>16. If parties have responded “yes” to Question 15, parties must provide an explanation of the basis for the stipulation. If one or more, but not all, parties to the transaction provide(s) a stipulation in Question 15, parties should provide an explanation as to why not all parties are providing the stipulation.</p>
<p>17. If any party to the transaction has previously been a party to another transaction notified or submitted to the Committee, even if the notice or declaration was withdrawn and the transaction abandoned, parties must list each notice or declaration case number assigned by the Committee for all such prior transactions. If inapplicable, indicate “N/A” in response to Question 17.</p>
<p>18. If the holder of the real estate that is the subject of the transaction, the foreign person, any parent of the foreign person, or any person of which the foreign person is a parent, has been convicted of a crime in any jurisdiction, including any foreign jurisdiction, within the past 10 years, parties must provide an explanation for each such conviction, including the relevant jurisdiction and criminal case law number. If inapplicable, indicate “N/A” in response to Question 18.</p>
<p>19. Each party to a transaction filing a declaration must provide a certification of the information contained in the declaration consistent with § 802.202. The certification must be signed by the chief executive officer or other duly authorized designee of each party to a transaction filing a declaration. A sample certification to accompany the declaration may be found on Treasury’s Website at https://home.treasury.gov/system/files/206/Real-Estate-Template-for-certification-to-accompany-declaration.pdf.</p>