DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

Outbound Investment Security Program

Frequently Asked Questions

December 13, 2024

These questions and answers issued by the U.S. Department of the Treasury (Treasury Department) provide general information to assist the public in understanding and complying with 31 CFR part 850 (the Outbound Rules). The full regulatory text and supplementary information at 89 FR 90398 should be consulted when evaluating the applicability of the Outbound Rules to any particular transaction.

General

1. **Why did the Treasury Department issue these regulations?**

   Answer: Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern," issued by President Biden on August 9, 2023 (the Outbound Order), directs the Secretary of the Treasury, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, to promulgate rules and regulations, including prescribing definitions of terms as necessary to implement the Outbound Order and administer the new program. The Outbound Rules include specific requirements for U.S. persons and reflect the Treasury Department's consideration of public comments received in response to its August 2023 advance notice of proposed rulemaking (ANPRM) and July 2024 notice of proposed rulemaking (NPRM).

2. **When do the Outbound Rules take effect?**

   Answer: January 2, 2025. Transactions with a completion date on or after January 2, 2025, are subject to the Outbound Rules, including the prohibition and the notification requirement, as applicable.

3. **What are the key differences between the NPRM and the Outbound Rules?**

   Answer: In evaluating public comments on the August 2023 ANPRM and the July 2024 NPRM, and considering feedback from stakeholders, allies and partners, and consulting with relevant U.S. Government departments and agencies, the Treasury Department made certain changes intended to address feedback raised by commenters including with respect to the clarity of the regulations and compliance.

   Key areas that have evolved since the NPRM include:

   - The scope of coverage of transactions involving artificial intelligence (AI) systems;

- The knowledge standard (which describes the knowledge a U.S. person must have about certain facts and circumstances related to a transaction to trigger obligations under the Outbound Rules);
- The scope of the prohibition on U.S. persons "knowingly directing" certain transactions;
- The scope of LP investments that are covered transactions under the Outbound Rules and those that are excepted;
- The definition of covered foreign person with respect to persons holding an interest in a person of a country of concern;
- The treatment of certain debt and contingent equity transactions;
- The exception of derivative transactions;
- The exception of certain transactions between a U.S. person and its controlled foreign entity;
- The exception of employee compensation in the form of stock or stock options; and
- Confidential treatment of information submitted to the U.S. Government under the Outbound Rules.

The Federal Register notice implementing the Outbound Rules (89 FR 90398) should be reviewed for further details.

4. How does a U.S. person file a notification?

Answer: Notifications are required to be submitted via electronic filing. The Treasury Department will post instructions on how to file on the Treasury Department's Outbound Investment Security Program website prior to the effective date of the Outbound Rules.

5. Can U.S. persons still invest in a country of concern?

Answer: The Outbound Rules do not prohibit all investment activity in countries of concern. Consistent with the Outbound Order, the Outbound Rules are narrowly targeted at certain types of investments in country of concern entities and related to sensitive technologies and products critical for military, intelligence, surveillance, or cyber-enabled capabilities. The Outbound Rules focus on discrete categories of transactions involving sub-sets of technologies and products in an effort to protect national security, maximize compliance, and minimize unintended consequences. In addition, certain transactions are excepted, including those in publicly traded securities and derivatives, certain limited partner (LP) investments, certain intracompany transactions between U.S. parents and their controlled foreign entities, and certain employee compensation in the form of stock or stock options.

The United States supports an open investment environment consistent with the protection of U.S. national security, and the Outbound Order and Outbound Rules are in line with this longstanding policy.

6. **Does this program set-up a screening process or case-by-case review of investments?**

   Answer: No. Consistent with the Outbound Order, U.S. persons are prohibited from undertaking certain transactions and are required to notify the Treasury Department of certain other transactions. The Treasury Department will not conduct a case-by-case review of transactions. The relevant U.S. person undertaking a transaction has an obligation to determine whether the given transaction is prohibited, permissible but subject to notification, or not covered by the Outbound Rules because either it is an excepted transaction or does not otherwise meet the Outbound Rules' definition of a "covered transaction."

7. **How will U.S. individuals and entities be expected to comply with this program?**

   Answer: The Outbound Rules place certain requirements on U.S. persons, including recordkeeping and notification requirements. The Outbound Rules also establish a prohibition on certain U.S. person transactions. A U.S. person's knowledge of certain facts or circumstances is generally a pre-requisite for obligations under the Outbound Rules to apply. The Treasury Department therefore anticipates that U.S. persons should be able to comply with the Outbound Rules through a reasonable and diligent transactional due diligence and compliance process. A U.S. person who fails to undertake a reasonable and diligent inquiry prior to a transaction may be responsible for knowledge it could have acquired had it undertaken such an inquiry.

8. **Are U.S. nationals working at foreign entities going to be impacted?**

   Answer: U.S. persons are prohibited from knowingly directing transactions by non-U.S. entities that the U.S. person knows at the time of the transaction would be prohibited if engaged in by a U.S. person. The Outbound Rules provide for a U.S. person's recusal from participation in certain activities to avoid violating this prohibition. The Outbound Rules do not restrict a U.S. person from working at any entity that receives investment that is subject to the Outbound Rules, nor does it restrict a U.S. person from working at an entity making such an investment.

9. **Are technology licensing, consulting, or procurement contracts covered?**

   Answer: Covered transactions include certain transactions that involve the acquisition of equity or a contingent equity interest, conversion of a contingent equity interest, provision of debt financing that carries certain rights, greenfield investments or other corporate expansions, the entrance into joint ventures, and certain LP investments. Activities that do not meet the definition of a covered transaction are not subject to the program except where they are undertaken to evade or avoid the Outbound Rules.

10. Will the Treasury Department publish a list of designated covered foreign persons under the Outbound Rules?

Answer: At this time, the Treasury Department does not intend to publish a list of entities identified as covered foreign persons. Instead, the Treasury Department expects a U.S. person to conduct a reasonable and diligent inquiry to determine whether a transaction is covered under the Outbound Rules, including whether any covered foreign persons are involved.

The Treasury Department notes, however, that a transaction that would otherwise be a notifiable transaction is instead a prohibited transaction if the relevant covered foreign person:

- Is included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);
- Is included on the Bureau of Industry and Security's Military End User List (15 CFR part 744, supplement no. 7);
- Meets the definition of "Military Intelligence End-User" established by the Bureau of Industry and Security in 15 CFR § 744.22(f)(2);
- Is included on the Treasury Department's list of Specially Designated Nationals and Blocked Persons (SDN List), or is an entity in which one or more individuals or entities included on the SDN List, individually or in the aggregate, directly or indirectly, own a 50 percent or greater interest;
- Is included on the Treasury Department's list of Non-SDN Chinese Military-Industrial Complex Companies; or
- Is designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189.

11. What are the penalties for violations of the Outbound Rules?

Answer: The Outbound Order authorizes the Secretary of the Treasury to investigate violations of the regulations, including pursuing civil penalties available under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) and referring criminal violations to the Attorney General. The Secretary of the Treasury may also, as appropriate, take action authorized under IEEPA to nullify, void, or otherwise compel the divestment of any prohibited transaction. Under IEEPA, as of the date of issuance of the Outbound Rules, the maximum civil penalty for a violation is the greater of $368,136 or twice the value of the transaction that is the basis for the violation.

12. Is the Treasury Department working with U.S. allies and partners?

Answer: The Treasury Department, working with the U.S. Department of State and U.S. Department of Commerce, has engaged with U.S. allies and partners regarding the important national security goals of the Outbound Order. The Outbound Order and the scope of the program reflect discussions with the G7 and other ally and partner

engagements. The Treasury Department is encouraged by the interest and attention given to this issue by allies and partners.

13. **If a transaction is subject to or would implicate jurisdiction of the Committee on Foreign Investment in the United States (CFIUS), sanctions or licenses administered by the Treasury Department's Office of Foreign Assets Control (OFAC) or the U.S. Department of State, export controls, or other U.S. Government programs or rules, can it also be subject to the Outbound Rules?**

    Answer: Yes, it can be. A U.S. person should ascertain the applicability of the Outbound Rules to a particular transaction independent of whether other U.S. Government programs do or do not apply, or the disposition of a particular review or adjudication under any such programs. Nothing in the Outbound Rules should be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, license, authorization, or review provided by any other provision of Federal law including IEEPA, or any other authority of the President or the Congress under the Constitution of the United States. No action taken pursuant to any other provision of law or regulation authorizes any transaction prohibited by the Outbound Rules or alters any other obligation under the Outbound Rules. Moreover, no action taken pursuant to the Outbound Rules relieves parties from complying with any other applicable laws or regulations.

    For example, if a U.S. person makes an investment that it believes is covered by a General License issued by OFAC, the person would still be required to comply with any applicable provisions of the Outbound Rules. At the same time, the existence of an exception or the granting of an exemption under the Outbound Rules does not excuse a person from its obligations under any other applicable U.S. Government program.

14. **After a U.S. person submits a notification, will the Treasury Department contact the U.S. person submitter?**

    Answer: Under section 850.404(b) of the Outbound Rules, the Treasury Department may contact a U.S. person submitter who has filed a notification with questions or document requests related to the transaction or compliance with the Outbound Rules. However, apart from receiving an acknowledgment of receipt of a notification from the Treasury Department, a submitter should not expect to receive any confirmation from the Treasury Department with respect to the notification or its status.

15. **If a U.S. person investor entered into an investment agreement prior to the January 2, 2025 effective date of the Outbound Rules but the transaction will close on or after the effective date, is the transaction subject to the Outbound Rules?**

    Answer: Transactions with a completion date on or after the effective date of the Outbound Rules (January 2, 2025, or the "effective date") may be subject to the Outbound Rules regardless of whether an agreement was entered into prior to the effective date. In other words, the mere signing of a contract or term sheet prior to the effective date does not render a transaction outside the scope of the Outbound Rules if it otherwise meets the criteria of a covered transaction and the completion date is on or after January 2, 2025.

However, the Outbound Rules contain an exception for transactions made after the effective date but pursuant to a binding, uncalled capital commitment entered into prior to the effective date. This exception is limited to situations where the U.S. person has made a binding capital commitment to a fund or similar investment entity prior to January 2, 2025, and the capital is then called after the effective date, recognizing that often a fund's investment targets have yet to be determined at the time of the capital commitment. This is in contrast to other types of transactions where a U.S. person signs a binding agreement to undertake a transaction with or with respect to an investment target and the transaction has a completion date on or after the effective date.

Defined Terms

16. What constitutes an "AI system" and what does it mean to "develop" such a system? Under the Outbound Rules, how should updated model versions or future adaptations of an AI system be assessed in relation to the original or prior AI system?

Answer: Section 850.202(a) of the Outbound Rules defines AI systems as machine-based systems that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Section 850.202(a) also gives examples of what would fall under this definition, such as a system that uses model inference to make a classification, prediction, recommendation, or decision. Importantly, the Outbound Rules' requirements are triggered by transactions in which a relevant person "develops" an AI system that is designed for or that is intended by a covered foreign person to be used for certain end uses or was trained using computing power greater than a specified threshold. A person "develops" such a system when they engage in any stages prior to serial production, and section 850.211 provides examples of what is means to "develop." As applied, this would include designing an AI system or making substantive modifications with respect to a third-party AI model or machine-based system, such as removing security measures or safeguards of the third-party AI model.

For the purposes of assessing whether an AI system has any of the end-use applications set forth in sections 850.217(d) and 850.224(j), different versions of an AI system, including adaptations, derivatives, subsequent generations, or successor systems, should be assessed as distinct AI systems since the designed end-use or capabilities of a successor system could vary from a prior version.

17. What are examples of what is and what is not:

- **A "person of a country of concern"?**

Answer: In addition to an entity that has its principal place of business in, has its headquarters in, or is incorporated in or otherwise organized under the laws of a country of concern, there are multiple scenarios where an entity that does not have any of those attributes may nevertheless be considered a "person of a country of concern" under the Outbound Rules.

Example 17.1: Company A is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern. A ministry of the government of a country of concern controls Company A, including possessing the power to direct or cause the direction of Company A's management and policies. Company A is therefore a person of a country of concern under section 850.221(c).

Example 17.2: Company B is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern. Each of six citizens of a country of concern, each of whom is not a U.S. citizen or U.S. permanent resident, is a voting director on the board of Company B. Company B has ten directors on its board, each with equal voting power. Company B is therefore a person of a country of concern under section 850.221(d), because 60 percent of the voting power of Company B's board is held in the aggregate by persons of a country of concern.

Example 17.3: Company C is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern. Company D, a person of a country of concern under section 850.221(b), holds 60 percent of the voting power of the board of Company C. Company C is therefore a person of a country of concern, because at least 50 percent of its outstanding voting interest is held by a person of a country of concern.

- **A "U.S. person"?**

Example 17.4: Company E, which is incorporated in the United States, has an unincorporated branch office in a country of concern. The unincorporated branch office of Company E is a U.S. person under section 850.229, because it is a foreign branch of an entity organized under the laws of the United States.

Example 17.5: Company F is a foreign subsidiary of a U.S. person company under section 850.227. Absent additional facts, Company F is not a U.S. person under section 850.229, because it is not an entity organized under the laws of the United States or any jurisdiction within the United States, nor is it a foreign branch of any such entity. Note that even though Company F is not a U.S. person, Company F meets the criteria of a controlled foreign entity, the U.S. person parent of which has certain responsibilities under the Outbound Rules, including under sections 850.302 and 850.402.

Example 17.6: Company G is an entity incorporated outside of the United States with an employee physically located in the United States who is not a U.S. citizen or permanent resident. The employee is a U.S. person under section 850.229, because such person is in the United States. Absent additional facts, Company G is not a U.S. person; the physical presence of an employee in the United States does not itself render Company G a U.S. person. The employee would be subject to the Outbound Rules, including prohibitions on "knowingly directing" transactions (if such employee has authority and exercises that authority pursuant to section 850.303).

Example 17.7: Company H is an entity organized outside the United States with a subsidiary incorporated in the United States. While the subsidiary is a U.S. person,

absent additional facts, Company H is not a U.S. person; having a subsidiary that is a U.S. person does not itself render Company H a U.S. person.

- **“Knowingly directing an otherwise prohibited transaction”?**

Example 17.8: A U.S. person is a corporate officer at Company I, a non-U.S. person operating company incorporated in a foreign jurisdiction. The U.S. person’s role includes substantial participation in investment decisions related to Company I’s strategic acquisitions, including as a member of the investment committee that votes on whether to undertake potential investments. The U.S. person participates in deliberations among Company I’s leadership about whether to undertake a share purchase in Company J, a privately-held covered foreign person that develops a quantum computer. Following these deliberations, the U.S. person votes in favor of the share purchase and knows at the time of the vote that the share purchase would be a prohibited transaction if undertaken by a U.S. person. The U.S. person has knowingly directed an otherwise prohibited transaction under section 850.303(a), because such person has authority to make or substantially participate in decisions as part of a group on behalf of Company I and has exercised that authority to direct a transaction that would be prohibited if engaged in by a U.S. person.

Example 17.9: A U.S. person is an accountant employed at Company K, a company that is not a U.S. person, and does not have the authority to make decisions on behalf of the company. Per instructions from Company K’s management, the U.S. person accountant undertakes financial due diligence in support of a potential corporate investment into a covered foreign person that would be a prohibited transaction if engaged in by a U.S. person. Company K then makes the investment. Absent additional facts, the U.S. person employee has not knowingly directed an otherwise prohibited transaction under section 850.303(a), because the U.S. person employee did not have the authority to make decisions on behalf of Company K.

Example 17.10: A U.S. person serves on the management committee at a pooled investment fund that is not a U.S. person. The fund makes an investment into a covered foreign person that would be a prohibited transaction if performed by a U.S. person. While the management committee reviews and approves all investments made by the fund, the U.S. person recuses themself from the deliberations related to the particular investment, the decision-making, the work on relevant transaction documents, and negotiations with the investment target. Under section 850.303(b), absent additional facts, the U.S. person has not knowingly directed an otherwise prohibited transaction.

- **A “covered foreign person”?**

Example 17.11: Company L is an entity incorporated outside of a country of concern and is not itself engaged in any covered activity. Company M is incorporated in a country of concern and engages in a covered activity and is therefore a covered foreign person. Company L holds a small equity interest in Company M, and more than 50 percent of Company L’s capital expenditures are attributable to Company M for the most recent year for which audited financial statements are available at the time of a relevant investment by a U.S. person in Company L. Because Company L holds an equity interest in Company M and more than 50 percent of Company L’s capital

expenditures are attributable to Company M, Company L is a covered foreign person under section 850.209(a)(2).

Example 17.12: Company N holds a 10 percent equity interest in Company O, a covered foreign person, and income from Company O comprises 30 percent of Company N's net income, and such income from Company O is above $50,000 for the most recent year for which audited financial statements for Company N are available. In addition, Company N holds a 10 percent equity interest in Company P, a covered foreign person, and income from Company P comprises 21 percent of Company N's net income, and such income from Company P is above $50,000 for the most recent year for which audited financial statements for Company N are available. Company N is a covered foreign person under section 850.209(a)(2), because Company O and Company P are each a covered foreign person in which Company N holds an equity interest, income for Company N derived from each of Company O and Company P is at least $50,000, and in the aggregate, the income from Company O and Company P comprises 51 percent of the net income of Company N for the most recent year for which audited financial statements are available.

Example 17.13: Assume the same facts as in Example 17.12, except that none of Company N's net income is attributable to Company O, and instead, 30 percent of Company N's capital expenditures are attributable to Company O for the most recent year for which audited financial statements for Company O are available. Absent additional facts, Company N is not a covered foreign person under section 850.209(a)(2), because the percentage of capital expenditures attributable to Company O and the percentage of net income attributable to Company P are not aggregated (because they are different financial metrics), and neither the percentage of Company N's capital expenditures attributable to Company O, nor the percentage of Company N's net income attributable to Company P is more than 50 percent.

Example 17.14: Company Q is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern, but 50 percent of its equity is held by a person of a country of concern. Company Q engages in a covered activity. Company Q therefore is a person of a country of concern pursuant to section 850.221(d), and because it is a person of a country of concern that engages in a covered activity, Company Q is also a covered foreign person pursuant to section 850.209(a)(1).

Example 17.15: Company R is incorporated in a country of concern but is not engaged in a covered activity. Company R is wholly owned by Company S, which is incorporated in a country of concern and is engaged in a covered activity. Even though Company R is a person of a country of concern and is wholly owned by a covered foreign person, absent additional facts, Company R is not a covered foreign person.

18. What does "engages in" mean in the definition of a covered foreign person? Would the purchase of an item listed in sections 850.217 and 850.224 render a person as one that engages in the relevant activity?

Answer: Section 850.209(a)(1) defines a covered foreign person as a person of a country of concern that "engages in" a covered activity. "Engages in" functions as a link between

a person of a country of concern and the covered activities enumerated in detail in sections 850.217 and 850.224 (defining notifiable transaction and prohibited transaction, respectively). In other words, "engages in" should be understood as succinctly capturing the activities described in sections 850.217 and 850.224, such as designs, fabricates, packages, develops, and produces, among other things.

Therefore, when determining whether an action by a person of a country of concern constitutes "engaging in" a covered activity, a U.S. person should assess whether the person of a country of concern is undertaking any of the activities specifically described in sections 850.217 and 850.224. Absent other facts, the purchase of an item or service does not, on its own, constitute engaging in a covered activity.

Covered Transaction

19. What are examples of what is and what is not:

- **A "covered transaction"?**

Example 19.1: A U.S. person acquires an entity comprising an existing manufacturing facility in a country of concern that does not, at the time of the acquisition, engage in a covered activity. Prior to the transaction, the U.S. person extensively researches the feasibility of retrofitting the facility to undertake a covered activity and secures financing on the basis of future cash flows from the facility's undertaking of such covered activity. The acquisition is therefore a covered transaction under section 850.210(a)(4)(ii) because it is the acquisition of operations in a country of concern that the U.S. person at the time of the acquisition plans to result in the engagement of a person of a country of concern in a covered activity.

Example 19.2: A U.S. person invests as an LP in Fund A, a pooled investment fund that is not a U.S. person. At the time of the U.S. person's investment, Fund A has not undertaken any investments. Fund A's prospectus states that Fund A will invest in entities that are leading AI technology advancements including those in a country of concern. One year following the conclusion of fundraising, Fund A undertakes a transaction that would be a covered transaction if undertaken by a U.S. person. The U.S. person's investment as an LP is therefore a covered transaction under section 850.210(a)(6), because the U.S. person had reason to know (and therefore, "knew") that Fund A was likely to invest in a person of a country of concern engaged in one of the sectors enumerated in section 850.210(a)(6), and Fund A subsequently undertook a transaction that would be a covered transaction if undertaken by a U.S. person. More specifically, if Fund A's transaction would be a prohibited transaction if undertaken by a U.S. person, then the U.S. person's investment as an LP into Fund A is a prohibited transaction; if Fund A's transaction would be a notifiable transaction if undertaken by a U.S. person, then the U.S. person's investment as an LP into Fund A is a notifiable transaction.

Example 19.3: A U.S. person investment bank provides underwriting services for an initial public offering of an entity it knows is a covered foreign person. Absent additional facts, the provision of the underwriting services is not a covered transaction unless the investment bank itself acquires an equity interest in the covered foreign

person as part of its underwriting activities, in which case the acquisition of equity would be a covered transaction under section 850.210(a)(1).

Example 19.4: A U.S. person obtains convertible debt in an entity it knows is a covered foreign person. The acquisition of convertible debt is a covered transaction under section 850.210(a)(1). Based on the covered activity undertaken by the covered foreign person, the transaction is a notifiable transaction under section 850.217. The U.S. person duly submits a notification to the Treasury Department of the acquisition of the contingent interest. The convertible debt later converts to equity; at the time of the conversion, the covered foreign person engages in the same covered activity. The conversion of the contingent equity interest into equity is a covered transaction under section 850.210(a)(3) that is a separate notifiable transaction, and the U.S. person lender must timely submit another notification to the Treasury Department under section 850.217.

- **An "indirect" covered transaction?**

Example 19.5: A U.S. person purchases shares in a special purpose vehicle established in order to acquire an equity interest in a covered foreign person, and the special purpose vehicle acquires such equity interest following the U.S. person's investment. Absent other relevant facts, this transaction is an "indirect" covered transaction under section 850.210(a), because the U.S. person has used an intermediary to engage in a transaction that would be a covered transaction if engaged in directly by the U.S. person.

20. How are a U.S. person's "plans" assessed for the purposes of section 850.210(a)(4) in the case of greenfield or other investments?

Answer: Whether a transaction is a covered transaction under section 850.210(a)(4) depends on whether the U.S person knows at the time of its acquisition, leasing, or other development that it will result in, or that the U.S. person plans for it to result in, the establishment of a covered foreign person, or the engagement of a person of a country of concern in a covered activity. Indicators relevant to what the U.S. person "plans" include, for example, correspondence with the investment target or relevant government, business plans, board presentations, and presentations to potential investors.

21. What if an investment target was not engaged in a covered activity at the time of a U.S. person's investment but later pivots into a covered activity?

Answer: The Outbound Rules apply to U.S. person transactions involving an investment target that engages in activities at the time of the transaction of which a U.S. person has knowledge (which includes "reason to know" following a "reasonable and diligent inquiry"). The Outbound Rules are not intended to create an ongoing obligation for a U.S. person to monitor or prevent post-transaction changes to an investment target's activities.

As to corporate pivots into covered activity that occur after the completion date of the relevant transaction, there are two main considerations with respect to the application of the Final Rule: first, whether the U.S. person had knowledge at the time of the transaction

regarding the later corporate pivot into a covered activity, including whether the U.S. person had or should have had an awareness of a high probability of a fact or circumstance's existence or future occurrence (in which case the transaction would be a notifiable transaction or a prohibited transaction in the first instance under Subpart C or Subpart D, as applicable).

In addition, under section 850.403, if following a transaction a U.S. person later acquires "actual knowledge" of a fact or circumstance that, if known to the U.S. person at the time of the transaction, would have resulted in a notifiable transaction or a prohibited transaction, the U.S. person will be required to submit a notification within 30 days of acquiring such knowledge. Section 850.403 requires "actual knowledge" of a fact or circumstance and does not include "reason to know," as the intention is not to create a requirement to conduct continuing diligence or actively monitor the activities of the target of the transaction after the completion date for purposes of section 850.403, assuming that a "reasonable and diligent inquiry" had been conducted at the time of the transaction.

Notifiable and Prohibited Transactions

22. How are computation thresholds for an AI system calculated for the purpose of determining whether a transaction is a notifiable transaction, a prohibited transaction, or neither?

Answer: The computation thresholds for AI systems should be calculated by aggregating the quantity of computing power measured in computational operations (for example, integer or floating-point operations) required to train a given AI system. For instance, the computational operations required to train an AI system that is a combination of smaller, pre-trained AI models would be the summation of the computational operations required to train each component model of the AI system. Similarly, developing an AI model based on the transfer of knowledge from one model to another would include the computational operations required to train both models.

23. How can a U.S. person evaluate whether an investment target or other transaction counterparty "intends" for an AI system to be used for the end uses enumerated in section 850.224(j)?

Answer: The Treasury Department expects that U.S. persons may be able to evaluate whether a covered foreign person intends for an AI system to be used for certain end uses based on, among other things, pre-transaction discussions and meetings with counterparties where such a result is considered—these situations may confer "knowledge," as defined in section 850.216, including "reason to know."

U.S. Person Due Diligence

24. **What does "all reasonable steps" mean regarding a U.S. person prohibiting and preventing a controlled foreign entity from engaging in a transaction that would be a prohibited transaction if engaged in by a U.S. person**?

    Answer: Pursuant to section 850.302, a U.S. person is required to take "all reasonable steps" to prohibit and prevent any transaction by its controlled foreign entity that would be a prohibited transaction if engaged in by a U.S. person. The Treasury Department expects that a U.S. person will exercise its rights as a parent to prevent a controlled foreign entity from engaging in a transaction that would be prohibited if undertaken directly by the U.S. person. If a controlled foreign entity undertakes a transaction that would be a prohibited transaction if engaged in by a U.S. person, the Treasury Department will consider, among other factors, any of the following with respect to a U.S. person and its controlled foreign entity in determining whether the U.S. person took "all reasonable steps" for purposes of assessing compliance with the Outbound Rules: (1) the execution of agreements with respect to compliance with the Outbound Rules between the U.S. person and its controlled foreign entity; (2) the existence and exercise of governance or shareholder rights by the U.S. person with respect to the controlled foreign entity, where applicable; (3) the existence and implementation of periodic training and internal reporting requirements by the U.S. person and its controlled foreign entity with respect to compliance with the Outbound Rules; (4) the implementation of appropriate and documented internal controls, including internal policies, procedures, or guidelines that are periodically reviewed internally, by the U.S. person and its controlled foreign entity; and (5) implementation of a documented testing and/or auditing process of internal policies, procedures, or guidelines.

    In evaluating whether "all reasonable steps" were taken, the Treasury Department will consider the totality of the relevant facts and circumstances, including whether steps were reasonable in light of the relevant facts and circumstances and whether steps were taken earnestly and in good faith, *e.g.*, were intended to be effective and (as applicable) were adequately resourced and empowered to function effectively.

25. **What constitutes a "reasonable and diligent inquiry," as described in the discussion of the knowledge standard in 850.104?**

    Answer: A "reasonable and diligent inquiry" refers to a U.S. person's efforts to obtain relevant information about a transaction as part of a reasonable pre-transaction due diligence process, given that whether a transaction is a "covered transaction" depends, in part, on the knowledge a U.S. person had or could have had at the time of the transaction. Because each transaction is different, the Treasury Department will consider the totality of relevant facts and circumstances in assessing whether such an inquiry has been undertaken. Such assessment will consider, among other things, the specific factors set forth in section 850.104(c):

    > (1) The inquiry a U.S. person has made regarding an investment target or other relevant transaction counterparty (such as a joint venture partner), including

questions asked of the investment target or relevant counterparty, as of the time of the transaction;

(2) The contractual representations or warranties the U.S. person has obtained or attempted to obtain from the investment target or other relevant transaction counterparty (such as a joint venture partner) with respect to the determination of a transaction's status as a covered transaction and status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person;

(3) The efforts by the U.S. person as of the time of the transaction to obtain and consider available non-public information relevant to the determination of a transaction's status as a covered transaction and the status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person;

(4) Available public information, the efforts undertaken by the U.S. person to obtain and consider such information, and the degree to which other information available to the U.S. person as of the time of the transaction is consistent or inconsistent with such publicly available information;

(5) Whether the U.S. person purposefully avoided learning or seeking relevant information;

(6) The presence or absence of warning signs, which may include evasive responses or non-responses from an investment target or other relevant transaction counterparty (such as a joint venture partner) to questions or a refusal to provide information, contractual representations, or warranties; and

(7) The use of available public and commercial databases to identify and verify relevant information of an investment target or other relevant transaction counterparty (such as a joint venture partner).

The “reasonable and diligent inquiry” framework is intended to apply to a variety of transactions rather than creating a prescriptive, one-size-fits-all requirement. Under this framework, a U.S. person can, following a “reasonable and diligent inquiry,” proceed with a transaction if at the time it does not have knowledge of relevant facts that would render the transaction a covered transaction. This would be true even if, for example, the investment target had been engaged in a covered activity at the time of the relevant transaction, but the U.S. person lacked knowledge or a reason to know about that covered activity following a “reasonable and diligent inquiry.”

26. What should a U.S. person do when information required to determine the applicability of the Outbound Rules is only within the possession of the investment target? What if a U.S. person is unable to obtain answers to diligence questions?

Answer: The Treasury Department expects a U.S. person to make efforts to ascertain relevant information about a transaction as part of a reasonable pre-transaction due diligence process. The Treasury Department acknowledges that in certain instances,

information required to assess whether a transaction is a covered transaction may be difficult to ascertain. In such circumstances, a U.S. person may wish to obtain representations or warranties from the relevant transaction counterparty regarding pertinent information such as the investment target or counterparty's ownership, investments, and activities. While receipt of contractual representations or warranties—such as with respect to a transaction's status as a covered transaction and the status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person—does not confer a safe harbor, such representations and warranties can provide, in the absence of other relevant information available to a U.S. person as part of a "reasonable and diligent inquiry" and the absence of warning signs, an indication that a U.S. person lacked a "reason to know" of such facts or circumstances.

27. What are the expectations for a U.S. person investor in terms of doing diligence to determine whether entities downstream of an investment target are themselves covered foreign persons such that section 850.209(a)(2) may apply and the investment target may also be a covered foreign person?

Answer: For a transaction to be a covered transaction as defined in section 850.210, the U.S. person must know at the time of the transaction that such transaction is with or involving a covered foreign person. The Treasury Department's expectations of a "reasonable and diligent inquiry" therefore relate to whether an investment target or other relevant counterparty meets the definition of a covered foreign person. Depending on applicable facts and circumstances, part of such a "reasonable and diligent inquiry" may include, among other things, making inquiries of an investment target or relevant counterparty as to whether any entity or entities in which the target has an interest specified in section 850.209(a)(2) are a covered foreign person and if so, whether such entity or entities contribute to the investment target's overall finances in a way that could make the target a covered foreign person under section 850.209(a)(2).

Certain information necessary to ascertain the applicability of section 850.209(a)(2) may be exclusively within the possession of the investment target. In accordance with section 850.104(c), in assessing whether a U.S. person has undertaken a "reasonable and diligent inquiry," the Treasury Department may consider, among other things, whether the relevant information was sought from the investment target and whether there were warning signs indicating that an investment target's answers may be incomplete, inaccurate, or untruthful. A U.S. person is also expected to use, among other resources, available public and commercial databases to attempt to identify relevant information or verify relevant information provided by an investment target. However, this expectation does not necessarily give rise to an expectation of an individualized "reasonable and diligent inquiry" to be conducted with respect to each entity in which an investment target has or may have an interest.

Knowledge Standard and Knowingly Directing

28. Does a U.S. person's participation in an advisory board or advisory committee of a pooled investment fund constitute "knowingly directing" in the context of what would be a prohibited transaction (if undertaken by a U.S. person)?

Answer: In situations where an advisory board or committee has the authority to approve or disapprove certain transactions, such as those where conflicts of interest are present, the advisory board or committee would have the authority to "make or substantially participate in decisions" of the pooled investment fund. In cases where an advisory board or committee approves a transaction that would be a covered transaction if undertaken by a U.S. person, a U.S. person that participates in the advisory board or committee would be liable for "knowingly directing" such a transaction unless they recuse themself in the manner specified in section 850.303(b).

Excepted Transaction

29. What is an example of an intracompany transaction that is an excepted transaction?

Example 29.1: Company T, a U.S. person, has a controlled foreign entity, Company U, that has operations in a country of concern. Company U engages in various business lines, and has since prior to January 2, 2025, including one that involves a covered activity, therefore Company U is a covered foreign person. After January 2, 2025, Company T acquires an additional equity interest in Company U to enable Company U to further develop a new business line that does not involve a covered activity. Absent additional facts, this is an excepted transaction under section 850.501(c), because the U.S. person undertook a transaction with its controlled foreign entity, which would otherwise be a covered transaction, to support new operations that are not covered activities.

Example 29.2: Assume the same facts as Example 29.1, except Company T also provides debt financing to Company U to bridge market challenges impacting the sale of goods related to the covered activity. The debt financing is structured so as to afford Company T an interest in Company U's profits. Absent additional facts, this is an excepted transaction under section 850.501(c), because the transaction is between a U.S. person and its controlled foreign entity, which would otherwise be a covered transaction, that maintains the covered activity that the controlled foreign entity was engaged in prior to January 2, 2025.

30. What is an example of a syndicated debt financing that is an excepted transaction?

Example 30.1: Companies V, W, and X are non-U.S. person banks and Company Y is a U.S. person bank. Companies V, W, X, and Y enter into a syndication agreement to provide a loan to a covered foreign person. Company V is the syndication agent, and no company but Company V can initiate any action vis-à-vis the covered foreign person debtor. The credit agreement for the loan provides the syndicate banks with a voting interest upon default. Six months later, the covered foreign person debtor defaults on the loan, resulting in the syndicate's acquisition of a voting interest in the covered foreign person. Absent

additional facts, this is an excepted transaction for Company Y under section 850.501(e). While the U.S. person bank is a lender in a syndicate that provided a loan to a covered foreign person that, upon default, provided the U.S. person bank with a voting interest, in this example such U.S. person bank cannot on its own initiate any action vis-à-vis the debtor and is not the syndication agent.

National Interest Exemption

31. How is a national interest exemption granted, who can request such an exemption, and what materials need to be submitted to be considered for such an exemption?

Answer: The Secretary of the Treasury, in consultation with the Secretary of Commerce, the Secretary of State, and the heads of relevant agencies, as appropriate, may determine that a covered transaction is in the national interest of the United States and therefore is exempt from applicable provisions in Subparts C and D of part 850 (excluding sections 850.406, 850.603, and 850.604). Such a determination may be made following a request by a U.S. person on its own behalf or on behalf of its controlled foreign entity. Any such determination will be based on consideration of the totality of the relevant facts and circumstances. The Treasury Department anticipates that this exemption of a covered transaction will be granted by the Secretary of the Treasury only in exceptional circumstances.

Similar to the submission of a notification, the required certification for a national interest exemption must be signed by a duly authorized designee of the person submitting the request to ensure the provision of accurate and complete information to the Treasury Department.

Additional information on the national interest exemption is available at https://home.treasury.gov/system/files/206/Consideration_Guidelines_Related_Request_Under-850502a.pdf.