



CFIUS Reform: The Foreign Investment & National Security Act of 2007 (FINSA)

FINSA became effective October 24, 2007, after being passed with strong bipartisan and Administration support. The statute amends Section 721 of the Defense Production Act, which was enacted in 1988 to provide for national security reviews of foreign investments. Pre-FINSA, the Committee on Foreign Investment in the United States (CFIUS) implemented Section 721 solely per Executive Order 11858.

FINSA maintains the narrow scope and efficient timeline of CFIUS's review process

- *Scope*: Focuses solely on genuine national security concerns – not broader policy interests – posed by mergers, acquisitions, and takeovers that could result in foreign control of a U.S. business.
- *Timeline*: CFIUS must conclude a review in 30 days and an investigation, if needed, in a subsequent 45 days. In the rare case where CFIUS requests his decision, including on whether to prohibit or suspend a transaction, the President has 15 days to act.

Expands CFIUS membership:

- *New Members*: Adds Secretary of Energy and allows the President to add additional members.
- *Ex Officio Members*: Director of National Intelligence provides CFIUS independent intelligence analysis, and Labor Secretary advises on mitigation conformity with U.S. employment law. Neither participates in policy decisions.

Increases senior-level accountability within CFIUS:

- *Lead Agency*: Treasury, as CFIUS chair, must designate, as appropriate, an agency or agencies with lead responsibility for each covered transaction.
- *Investigations*: To conclude action on transactions that involve (1) foreign government control or (2) foreign control of critical infrastructure that CFIUS has determined “could impair” national security, if that risk has been mitigated, the Secretary or Deputy Secretary of the Treasury and of the lead agency must find the transaction “will not impair” national security.
- *Clearance*: At no lower than the Assistant Secretary level, Treasury and the lead agency must certify to Congress that CFIUS had “no unresolved national security concerns” in any review it concludes. For concluded investigations, the certification must be at the Secretary or Deputy Secretary levels.
- *Congress*: In addition to the clearance certifications for each concluded case (described above), CFIUS must give Congress confidential briefings upon request and issue an extensive annual report. These communications with Congress come only after action under Section 721 has been concluded.

Adds to the illustrative list of national security factors for CFIUS and the President to consider

Other additions and changes made by FINSA:

- *Risk Mitigation*: Mitigation agreements or conditions must be based on a “risk-based analysis.”
- *Enforcement and Tracking*: Requires CFIUS to monitor and enforce compliance with mitigation measures and to track withdrawn notices. Allows for imposition of civil penalties.
- *Reopening of Reviews*: Allows CFIUS to reopen a review if the parties made a material omission or misstatement to CFIUS, or if the parties intentionally and materially breach a mitigation agreement. Before reopening, CFIUS must agree no other remedy is sufficient.
- *Filer Certifications*: Filers must certify that filings are accurate, complete, and comply with the law.
- *Confidentiality*: Imposes on Congress, with regard to briefings from CFIUS, the same confidentiality rules that bind CFIUS with regard to all information provided by filers.

For additional information on CFIUS, please consult <http://www.treas.gov/offices/international-affairs/cfius/>.