

PUBLICATION

Treasury Issues Initial Pilot Program for CFIUS Reform

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October 2018

On October 10, 2018, the Department of the Treasury, as chair of the Committee on Foreign Investment in the United States (CFIUS), issued temporary regulations and launched a pilot program under the authority of the Foreign Investment Risk Review Modernization Act (FIRRMA). Congress passed FIRRMA earlier this year as part of the 2019 National Defense Authorization Act. FIRRMA will significantly expand the jurisdiction and reform the operations of CFIUS to review a number of transactions not previously covered by the Committee. As part of implementation, FIRRMA authorizes CFIUS to conduct pilot programs to implement provisions in the legislation that did not become effective immediately after enactment.

The purpose of Treasury's new pilot program is to assess and address ongoing risks to national security resulting from two particular circumstances: 1) the ability and willingness of some foreign parties to obtain equity interests in U.S. businesses to affect certain decisions regarding, or to obtain certain information relating to, critical technologies; and 2) the rapid pace of technological change in certain U.S. industries. The program establishes a requirement for mandatory 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 of a specified set of critical technologies.

The program will begin on November 10, 2018, which is 30 days following the publication of the regulations in the Federal Register. Full implementation of FIRRMA will occur no later than February 2020; the framework of FIRRMA will continue to evolve during this timeframe. We expect subsequent programs or regulations issued to address businesses that maintain or collect personal U.S. citizens' personal data, the definition of "emerging and foundational technologies," and other aspects of the legislation such as critical infrastructure.

If you have questions or would like further information regarding the content of this alert, please contact Matt Duff at 202.654.4613 or mduff@bakerdonelson.com.