

ALERT

Outbound Investment Initiative Appears in Omnibus Government Funding Package

December 30, 2022

On December 29, 2022, President Biden signed into law an omnibus government spending package, which includes explanatory statements regarding outbound investment initiatives. According to media reports and official statements issued alongside the legislation (here and here), the Consolidated Appropriations Act, 2023 provides the U.S. Departments of Treasury and Commerce with \$10 million dollars each to consider establishing “a program to address the national security threats emanating from outbound investments from the United States in certain sectors that are critical for U.S. national security.”

Further, the law directs Treasury and Commerce to submit reports describing such a program and identifying the resources that would be required to establish and implement it. These reports are due 60 days following the enactment of the legislation, *i.e.*, February 27, 2023. These agencies were likely selected to lead the program’s development, as Treasury currently serves as the Chair of the Committee on Foreign Investment in the United States (CFIUS) and Commerce is a CFIUS member and additionally leads the U.S. government’s industry analysis efforts and advises the White House on trade policy.

The new funding and reporting requirements in the omnibus appropriations law will likely provide momentum for significant federal action on outbound investment screening in 2023. As we previously wrote, during 2022, the White House considered executive action to address national security threats related to outbound investments, specifically the transfer of supply chains and other business assets abroad. Restrictions on capital investments in certain entities that pose national security risks became U.S. law through a

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series of executive actions in 2020 and 2021 as summarized [here](#), [here](#), and [here](#).

Similarly, Congress has been working on legislation that would establish a review process for outbound transactions related to the offshoring of certain supply chains and other “national critical capabilities” in order for the U.S. government to protect domestic manufacturing capacity. In recent months, key members of Congress urged the Biden Administration to take the lead on “safeguard[ing] our national security and supply chain resiliency on outbound investments to foreign adversaries” through executive action. The outbound investment initiative in the explanatory statements of the Consolidated Appropriation Act, 2023 is another indication of congressional support for executive action on outbound investment in the near term.

Wiley’s National Security and International Trade practices have represented clients before CFIUS and Team Telecom for decades. We have worked with Congress and executive agencies on legal and policy issues affecting investors and companies across the private sector. We welcome you to reach out to any of our professionals for additional information or guidance.