

Treasury, Commerce Issue Reports to Congress Outlining Proposed Outbound Investment Initiative

March 15, 2023

In accordance with the Consolidated Appropriations Act, 2023 (Public Law 117-328), the U.S. Treasury and Commerce Departments recently issued reports to Congress outlining the contours of a proposed outbound investment review program. As we previously reported, the Consolidated Appropriations Act encouraged the agencies to establish “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” and directed each agency to submit reports describing the program and identifying any resources that would be required to establish and implement it.

The White House has long been considering the issuance of an executive order (EO) that would allow for scrutiny of outbound investments from the United States, similarly to how the Committee on Foreign Investment in the United States (CFIUS) currently screens inbound foreign investment. According to the Treasury and Commerce reports, the approach under consideration would focus on investments “that could result in the advancement of military and dual-use technologies by countries of concern” and that are “not presently captured by export controls, sanctions, and other related authorities.”

The initiative would focus on outbound investments from the United States into “certain entities involved in a subset of certain key advanced technologies that are critical to U.S. national security.” The program could involve the prohibition of certain investments outright and/or the collection of information about outbound investments to

Authors

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law
Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law
Daniel P. Brooks
Partner
202.719.4183
dbrooks@wiley.law
Paul A. Devamithran
Associate
202.719.3451
pdevamithran@wiley.law

Practice Areas

Committee on Foreign Investment in the United States (CFIUS)
Export Controls and Economic Sanctions
National Security
Sanctions and Export Controls Resource Center
Team Telecom

inform potential future action. Based on statements from administration officials and other press reports, the industries under consideration for initial restriction or monitoring under the program include the semiconductor, artificial intelligence, and quantum computing industries, among others. The program would be implemented and administered by Treasury in coordination with Commerce and other federal departments and agencies.

According to the reports, final policy determinations are expected soon, and the agencies anticipate that an opportunity for public comment will be provided.

We will continue to track this matter closely as it develops. 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.