

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

ADM 5420.120
February 18, 2022

GSA ORDER

SUBJECT: Reviewing Transactions Filed with the Committee on Foreign Investment in the United States (CFIUS)

1. Purpose. This Directive establishes policy and provides guidance for GSA in meeting requirements for the review of covered transactions filed with the Committee on Foreign Investment in the United States (CFIUS).

2. Background. [The Committee on Foreign Investment in the United States \(CFIUS\)](#) is a government body authorized by law to review any merger, acquisition, or takeover that could result in control of a U.S. business by a foreign individual or entity, and certain real estate transactions by foreign persons. The review is solely to determine the effect of the transaction on the national security of the United States.

CFIUS members include the Departments of Treasury (chair), State, Defense, Justice, Commerce, Energy, and Homeland Security; the Office of the United States Trade Representative; and the White House Office of Science and Technology Policy. The Office of the Director of National Intelligence is an ex-officio member. As part of its due diligence review, CFIUS reaches out to Federal departments, agencies, and independent establishments that are not members of CFIUS but that have contracts with the U.S. business in question to ask whether the transaction raises any national security concerns for a specific agency. Accordingly, GSA and other Federal departments, agencies, and independent establishments are involved in CFIUS reviews on an as needed basis.

CFIUS operates pursuant to Section 721 of the Defense Production Act of 1950, as amended (Section 721), codified at Title 50, United States Code, Section 4565. Subject to limited exceptions, subsection 721(c) (codified at 50 U.S.C. 4565(c)), prohibits the disclosure to the public of information filed with CFIUS and explicitly provides that such information is exempt from disclosure under the Freedom of Information Act. All material pertaining to CFIUS cases will be protected from unauthorized disclosure or dissemination consistent with established GSA procedures for controlled but unclassified information (CUI), and where applicable, any classified information restrictions. All CFIUS transaction reviews are time sensitive.

3. Applicability. This Directive applies to:

- a. All GSA Services and Staff Offices (SSOs).

b. The GSA Office of Inspector General (OIG) to the extent that the GSA OIG determines it is consistent with the GSA OIG's independent authority under the Inspector General Act and it does not conflict with other GSA OIG policies or the GSA OIG mission.

c. The Civilian Board of Contract Appeals (CBCA) to the extent that the CBCA determines it is consistent with its independent authority under the Contract Disputes Act and other authorities and it does not conflict with the CBCA's policies or mission.

4. Policy.

a. GSA will evaluate the potential impact of foreign acquisitions of U.S. companies for GSA equities, referred to GSA by CFIUS, that could have an impact on national security.

b. GSA will review filings received from CFIUS that involve the foreign acquisition of a supplier to the Federal Government or under contract with GSA, an entity that owns real property that may be leased to the Federal Government, as well as third parties supplying or servicing said real property.

c. Evaluations will include:

(1) the impact on U.S. national security interests, technologies, and infrastructures critical to GSA missions;

(2) the impact on the integrity of the Federal acquisition system;

(3) the impact on GSA's functions necessary to ensure Continuity of Government;

(4) the impact on any GSA functions supported through any classified operations within the company being purchased; and

(5) any other concerns that a transaction poses.

5. Responsibilities.

a. Office of Mission Assurance.

(1) The Office of Mission Assurance (OMA) serves as the primary GSA office that interfaces with CFIUS.

(2) The OMA Associate Administrator will designate a lead evaluator to manage the review of a covered transaction (as defined in 31 CFR 800.213), including any queries for the parties to or the status of meetings about a covered transaction.

(3) OMA oversees and establishes policies for GSA's participation in CFIUS national

security reviews and for monitoring transactions filed with CFIUS.

(4) OMA conducts an initial review of covered transactions submitted to CFIUS, and identifies potential GSA equities for any potential national security issues or interests arising from the covered transactions.

(5) After initial analysis, OMA contacts relevant SSOs for review by subject matter experts and provides appropriate information pertaining to a covered transaction, to include a summary of the initial analysis and any questions arising from this analysis to assist the SSOs performing further review.

(6) OMA reviews, evaluates, and coordinates comments from all SSOs in situations where national security issues have been identified. In so doing, OMA:

(a) Meets with affected SSOs to discuss issues raised and arrives at a consensus GSA position on the CFIUS filing.

(b) Requests access to intelligence reports, as appropriate, and shares with cleared personnel to inform the further evaluation of a case.

(c) Determines, along with relevant SSOs, the appropriate mitigation monitoring strategy and responsibilities if GSA is party to a mitigation agreement.

(d) Notifies the Administrator of a covered transaction that may have adverse implications for national security.; and

(7) Provides assessment findings to the Administrator with recommendations for appropriate action.

b. Heads of Services and Staff Offices.

(1) Each SSO Head will designate a lead coordinator for the organization (i.e., preferably at the Chief of Staff or equivalent level). OMA will develop guidance to assist SSOs in a review.

(2) Each SSO contacted by OMA will analyze any questions arising from the initial OMA review and evaluate potential impacts of a covered transaction to the SSO's program area.

(3) Each SSO contacted by OMA will provide input to GSA's risk analysis of a covered transaction based on established criteria and/or any other case-specific considerations.

(4) GSA risk analysis of a CFIUS case will include, to the extent possible, an assessment of:

(a) the criticality and/or vulnerability of the U.S. assets being acquired;

(b) the threat to those assets posed by the acquiring entity and the consequences to national security if the threat is realized;

(c) the impact of a covered transaction on classified or unclassified contracts, facility security clearances, or other agreements between GSA and the parties to the transaction;

(d) whether the transaction involves covered real estate, as defined by 31 CFR 800.208 and 31 CFR 802.211;

(e) whether the transaction involves critical infrastructure, as defined by 31 CFR 800.214;

(f) whether the transaction involves critical technologies, as defined by 31 CFR 800.215; and

(g) the impact of a covered transaction on GSA's responsibilities for ensuring the Continuity of Government; and

(5) Ensure OMA is notified immediately upon discovery of potential national security concerns. Any SSO that identifies an unresolved national security issue during its initial review shall notify OMA staff that an investigation may be required and provide justification for the notice.

6. References.

a. The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115-232, 132 Stat. 2173 (August 3, 2018).

b. The Foreign Investment and National Security Act of 2007 (FISIA), Public Law 110-49, 121 Stat. 246 (July 26, 2007), amending section 721 of the Defense Production Act of 1950.

c. Defense Production Act of 1950, Section 721, as amended, Public Law 81-774, 64 Stat. 798 (September 8, 1950).

d. 31 CFR Part 800, Provisions Pertaining to Certain Investments in the United States by Foreign Persons.

e. 31 CFR Part 802, Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States.

f. 73 FR 74567, Guidance Concerning the National Security Review Conducted by the Committee on Foreign Investment in the United States (December 8, 2008).

g. Executive Order 11858, Foreign Investment in the United States, as amended by Executive Order 13456 (January 23, 2008).

7. Signature.

/S/ _____
ROBIN CARNAHAN
Administrator