

CFIUS Policy: House Lawmakers Advise Mnuchin to Narrowly Interpret Parts of New Law Expanding Committee's Powers

Regulatory Update

A new law expanding the powers of the interagency committee that reviews proposed foreign takeovers of American assets for national security risks shouldn't be enforced so broadly that it discourages overseas investment in the U.S., a bipartisan group of senior House lawmakers said in a [letter](#) to Treasury Secretary Steven Mnuchin.

In enforcing the law, the Committee on Foreign Investment in the United States, better known as CFIUS, should narrowly define "critical infrastructure" and "sensitive personal data" to focus on national security concerns, according to the letter, which *The Capitol Forum* obtained. House Financial Services Committee Chairman Jeb Hensarling, a Texas Republican, and Representative Maxine Waters of California, the panel's senior Democrat, were joined in signing the letter by Kentucky Republican Andy Barr, chairman of the Monetary Policy and Trade Subcommittee, and Gwen Moore of Wisconsin, the subcommittee's ranking member.

"Looking ahead, continued congressional confidence in CFIUS will hinge on tailored rulemaking," the lawmakers said in the September 12 letter.

Under the law, CFIUS is tasked with developing rules to define its new powers. The Treasury Department is the lead agency on the committee. Other new authorities from the bill take effect immediately, expanding CFIUS's powers to review transactions and non-controlling investments of foreign companies or individuals.

Congress last month passed the law as part of the defense authorization bill in an atmosphere of growing economic tension with China and concerns about Russian meddling in U.S. elections. CFIUS should focus their attention on deals involving Russian and Chinese entities and not hinder proposed investments from companies in allied countries, the lawmakers wrote.

"We encourage CFIUS to specify China and Russia in particular," the letter stated. "Our NATO allies and other friends around the world—including countries such as Japan, South Korea, Singapore, Australia, New Zealand and Israel—should not be the target of CFIUS's limited resources given the ongoing risks posed by Beijing and Moscow."

Although Senator John Cornyn, the Texas Republican who's the legislation's main sponsor, was widely seen as trying to curb China's investment and acquisition of technology that could be used for civilian and military purposes, the law's language doesn't single out any particular country.

“Sensitive personal data.” In the letter, the House lawmakers cautioned Mnuchin that the “sensitive personal data” mentioned in the law’s language meant information related to national security concerns and not information that “may simply identify individuals, or prove a source of embarrassment if disclosed.”

The letter’s writers dismissed the broader idea of “personally identifiable information,” which CFIUS had raised as a concern in reviewing China Oceanwide Holdings’ proposed acquisition of life insurer Genworth Financial and China-based Ant Financial Services Group’s bid for Moneygram International. Ant abandoned its deal because of CFIUS objections while China Oceanwide proposed a third party to manage Genworth customers’ data, a fix the committee approved.

The House lawmakers fretted in the letter that CFIUS would too broadly interpret the law’s mention of critical infrastructure. “While the federal government has made note of numerous ‘critical infrastructure sectors,’ these sectors encompass virtually every area of economic activity in the United States, and clearly should not serve as the basis for” the committee’s definition of critical infrastructure, according to the letter.