



Insight

The Current Status of Reforms to the Foreign Investment Review Process

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This week, both the [Senate Banking Committee](#) and the [House Financial Services Committee](#) held markups of the Foreign Investment Risk Review Modernization Act (FIRRMA). This legislation reforms the [Committee on Foreign Investment in the United States \(CFIUS\)](#), an interagency committee tasked with reviewing inbound foreign investment resulting from mergers, acquisitions, and other transactions in order to protect national security. The House and Senate committees added several amendments to each version of FIRRMA during their markups, and these changes are outlined below.

S. 2098 – FIRRMA IN THE SENATE

The Senate Banking Committee approved FIRRMA, as amended, [unanimously](#). One of the committee's most consequential changes to the bill was its removal of language giving CFIUS authority to review joint ventures between U.S. and foreign companies. This language would have expanded CFIUS's jurisdiction beyond its current focus on inbound foreign investment to also include outbound foreign investment, particularly when joint ventures result in U.S. companies sharing technology with their foreign partners.

The removal of this language effectively leaves joint ventures and any resulting technology transfer under the jurisdiction of export controls. [These controls](#) regulate the export of goods, services, technology, and software with national security implications or exports to countries of concern.

The committee also adopted a [substitute amendment](#) to FIRRMA proposed by Chairman Mike Crapo and Ranking Member Sherrod Brown. This amendment, [according to](#) Senator Crapo, “leverages the natural jurisdiction and authorities of the CFIUS process with those of the U.S. and multilateral export control regimes to review certain inbound and outbound transactions that may involve acquisitions of emerging critical or foundational technologies to the detriment of U.S. national security.”

Senator Chris Van Hollen introduced an additional amendment that would prevent the president from altering penalties placed on Chinese telecommunication companies that violate U.S. export control or sanctions laws. This was a direct reference to ZTE – a Chinese telecommunications company that currently faces sanctions from the U.S. Commerce Department for selling equipment to Iran and North Korea, but [may see relief](#) from President Trump as a part of broader trade negotiations with China. Senator Van Hollen's amendment, which was approved by the Committee, [directly rebukes](#) the president's use of these penalties as a bargaining chip.

H.R. 5841 – FIRRMA IN THE HOUSE

The bill considered by the House Financial Services Committee likewise did not contain language extending

CFIUS's authority to cover joint ventures, and thus leaves outbound investment under the jurisdiction of export controls. The committee did, however, approve language in FIRRMA modernizing and reforming the current export control regime.

Several [additional changes](#) were made during the House markup. First, the committee adopted an amendment from Congressman Brad Sherman requiring CFIUS to issue a report to Congress which details foreign investments that may result in censorship, specifically investments into U.S. entertainment and information sectors.

The Committee also approved an amendment proposed by Congressman Denny Heck empowering CFIUS to suspend proposed or pending “covered transactions” – transactions under CFIUS jurisdiction because they result in foreign ownership of a U.S. company – while under review. A final change to FIRRMA would require companies to pay a filing fee for CFIUS review as a way to support CFIUS's operations, a fee that is also included in the Senate version. The House bill stipulates, however, that the fee may not exceed 1 percent of the value of the transaction or \$300,000 (whichever is lower). This is different than the Senate version, which grants CFIUS the power to set its own fee without imposing a cap but stipulates that CFIUS must take into account the impact on small business. As amended, the House version of FIRRMA was approved unanimously.

NEXT STEPS

Several differences remain between the House and Senate versions of FIRRMA. These differences will have to be resolved before the bill can become law. Furthermore, FIRRMA has [been added to](#) the Senate's National Defense Authorization Act (NDAA), while the House already [passed](#) the NDAA without FIRRMA attached.