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Treasury “Vastly Expands” CFIUS Authority Over Real Estate Transactions Near Military Installations

On July 8, 2024, the U.S. Department of the Treasury (“Treasury”) issued a Notice of Proposed Rulemaking (“NPRM”) that would expand the jurisdiction of the Committee on Foreign Investment in the United States (“CFIUS”) with respect to certain transactions by foreign persons involving real estate near certain U.S. military installations.¹ A Treasury official stated that update “vastly expands the reach of CFIUS’ real estate jurisdiction.”²

Background

In 2018, Congress passed the Foreign Investment Risk Review Modernization Act (“FIRRMA”), which for the first time provided CFIUS with specific authorities over “pure” real estate transactions.³ FIRRMA provided CFIUS with the authority to review the purchase or lease by, or concession to, a foreign person of private or public real estate that is located in the United States that either (1) is in close proximity to a U.S. military installation or another facility or property of the U.S. government that is sensitive for national security reasons or (2) is, is located within, or will function as a part of, an airport or maritime port.⁴ Such “covered real estate transactions” relating to U.S. military installations (or other sensitive U.S. government sites) fall into two jurisdictional buckets—real estate that is within one mile or 100 miles radius of a listed installation.⁵

In order for a military installation or another government facility to be covered by CFIUS’s jurisdiction, Treasury must publish it on a list,⁶ which is done through a rule-making process. For instance, in 2023 CFIUS published a rule that added eight military installations to CFIUS’s list.⁷

¹ See Amendments to the Definition of Military Installation and the List of Military Installations in Regulations Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, Docket ID TREAS-DO-2024-0010, available [here](#).

² See Reuters, *US Treasury to Expand Security Reviews for Land Deals Near Military Bases* (Jul. 8, 2024), available [here](#).

³ Pre-FIRRMA, although CFIUS could theoretically identify national security risks associated with foreign persons in close proximity to sensitive sites, that jurisdiction did not adequately address situations where a foreign person simply acquired or leased real property not associated with any U.S. Business. In creating jurisdiction over purely real estate transactions, Congress sought to close the perceived gap limiting review to transactions involving a “U.S. Business.”

⁴ See Paul, Weiss, *Final CFIUS Regulations Implementing the Foreign Investment Risk Review Modernization Act of 2018 Are Now in Effect* (Feb. 27, 2020), available [here](#).

⁵ See 31 C.F.R. Part 802, available [here](#).

⁶ *Id.*

⁷ See Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States; 88 F.R. 57348, available [here](#).

The Proposed Additions

The NPRM would make significant additions to CFIUS’s real estate jurisdiction.⁸ Most significantly, the NPRM would bring 40 new military installations under its one-mile radius jurisdiction and 19 new military installations under its 100-mile radius jurisdiction, and move eight military installations from its one-mile radius jurisdiction to its 100-mile radius jurisdiction.⁹ This would be the single largest expansion of CFIUS’s real estate jurisdiction since FIRRMA was implemented, bringing the total number of listed installations under the scope of its authority to over 225.¹⁰

Indicating that further additions are possible, Treasury’s Assistant Secretary for Investment Security Paul Rosen said “[w]orking closely with the U.S. Department of Defense and other CFIUS members, we will remain responsive to the evolving nature of the risks we face to ensure we are protecting our military installations and related defense assets.”¹¹

Takeaways

Until recently, CFIUS’s use of this real estate-specific authority has been relatively limited. In May 2024, CFIUS recommended and President Biden ordered a Chinese-controlled crypto company to divest certain real estate holdings that it owned in close proximity to a strategic missile base in Wyoming.¹² This represented the first presidential action undertaken specifically through the expanded authority granted under FIRRMA over real estate transactions.

These developments indicate that real estate transactions are an area of increased focus for CFIUS. Foreign persons that are purchasing covered real estate in the United States may wish to consider whether the transaction may constitute a covered real estate transaction and whether a CFIUS filing may be prudent.

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⁸ Once the NPRM is posted to the Federal Register, interested parties will have 30 days to submit comments through the [eRulemaking portal](#) or by mail submission to Treasury. The full list of new installations can be found [here](#).

⁹ The NPRM also includes “technical corrections to the names of five military installations as a result of the Department of Defense Naming Commission [], as well as name changes to more accurately reflect the installations’ official name,” removes three installations from its jurisdiction because they are covered by other listings, and revises the definition of “military installation” such that, among other things, additional U.S. government facilities are captured by the definition, including U.S. Space Force bases, U.S. Army depots, arsenals, and military terminals, and U.S. Marine Corps installations, logistics battalions, and support facilities. See NPRM.

¹⁰ *Id.* at Note 2.

¹¹ U.S. Dep’t of the Treasury, *Press Release: Treasury Issues Proposed Rule to Expand CFIUS Coverage of Real Estate Transactions Near Military Installations* (Jul. 8, 2024), available [here](#).

¹² See Paul, Weiss, *President Biden Orders Chinese Crypto Company to Divest Real Estate in Close Proximity to U.S. Missile Base* (May 22, 2024), available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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