

Report from Washington

Treasury Issues Proposed Rule to Implement the COINS Act and Expand the Outbound Investment Security Program

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On October 22, 2026, the U.S. Department of the Treasury (“Treasury”) issued a Notice of Proposed Rulemaking (“NPRM”) setting forth a proposed rule to implement the Comprehensive Outbound Investment National Security Act of 2025 (“COINS Act”). As discussed in our prior [client alert](#), the COINS Act was enacted on December 18, 2025, as part of the National Defense Authorization Act for Fiscal Year 2026 and codified Treasury’s existing Outbound Investment Security Program, often referred to as the Outbound Investment Rule (the “OIR”), as Title VIII of the Defense Production Act. The COINS Act also directed Treasury to issue updated regulations, subject to public notice and comment, within 450 days of enactment.

The proposed rule retains the core architecture of the OIR in that it prohibits or requires notification of certain types of transactions with sufficient touchpoints to countries of concern and activity in covered sectors. That said, Treasury’s proposal would significantly expand the program’s reach in terms of both geographic scope and technological areas of focus. Most notably, the proposed rule:

- treats all development of artificial intelligence (now referred to as “super intelligence”) systems as prohibited rather than notifiable, regardless of compute power or use case;
- adds three technology sectors: hypersonic systems, high-performance computing and supercomputing, and biotechnology;
- extends the program to five additional countries of concern;
- broadens the definition of “covered foreign person”; and
- creates, for the first time, a process for parties to seek non-binding feedback from Treasury on whether a specific, live transaction would be prohibited.

The proposed rule also introduces several new exceptions and renames the OIR’s “covered transactions” as “covered national security transactions.”

The proposed rule does not take immediate effect. Treasury is accepting comments until December 7, 2026, after which it will issue a final rule setting the effective date. Until the final rule takes effect, the OIR remains in force as codified at 31 C.F.R. Part 850.

Summary of the Proposed Rule

The proposed rule would create a new 31 C.F.R. Part 851, rather than amending the OIR (currently codified at 31 C.F.R. Part 850), which will remain in place and govern transactions occurring between January 2, 2025 and the effective date of the new Part 851.

Unchanged Frameworks: As under the OIR, the proposed rule places obligations on U.S. persons and their “controlled foreign entities” with respect to transactions involving “covered foreign persons.”¹ The proposed rule also treats transactions involving “covered foreign persons” as prohibited or notifiable (still within 30 days of completion) based on the nature of such persons’ covered activity. Many other familiar elements of the OIR carry over largely unchanged, including the categories of “covered transactions,” the knowledge standard and diligence obligations, and the absence of a formal screening or approval process, meaning a U.S. person undertaking a transaction must itself determine whether it is prohibited, notifiable, or outside the scope of the rule. As discussed below, however, the proposed rule would, for the first time, allow parties to a live transaction to seek non-binding feedback from Treasury on whether it would be prohibited.

Expanded Countries of Concern: As required by the COINS Act, the proposed rule expands the list of countries of concern beyond China (inclusive of Hong Kong and Macau) to include Cuba, Iran, North Korea, Russia, and Venezuela under the regime of Nicolás Maduro Moros. In commentary to the NPRM, Treasury takes the position that the Maduro regime no longer exists and that Venezuela therefore does not currently meet this definition,² though Treasury nonetheless cautions investors to carefully evaluate Venezuela-related transactions.

Expanded Definition of “Covered Foreign Person”: As noted above, beyond the new countries of concern, the proposed rule broadens who qualifies as a covered foreign person in several respects. Unlike the OIR, however, dealings with covered foreign persons are not necessarily either prohibited or notifiable.

- **Structural change:** Under the OIR, the definition of “covered foreign person” requires engagement in a covered activity. Under the proposed rule, by contrast, “covered foreign person” status turns solely on the party’s relationship to a country of concern. The technology or “covered activity” analysis is instead incorporated into the definitions of notifiable and prohibited transactions. Thus, an activity-based nexus in the covered technology areas is still required for a transaction to be notifiable or prohibited. However, we note that contractual protections keyed on a party’s status as a “covered foreign person” may need to be revisited in light of this definitional change.

¹ Note that as discussed later in this alert, the proposed rule would break out the activity-related criteria from the definition of “covered foreign person,” such that the term would effectively replace the concept of a “person of a country of concern” (i.e., persons or entities from China, Hong Kong, or Macau) under the current OIR.

² Treasury notes that on March 5, 2026, the United States recognized Delcy Rodríguez as the head of state of Venezuela, and that her government is not the regime of Nicolás Maduro Moros.

- **Political leadership:** Two new categories of covered foreign persons are members of the Central Committee of the Chinese Communist Party, and other members of the political leadership of a country of concern. Entities they own or control would also be covered.
- **Broader “direction or control” test:** Under the OIR, an entity is covered by reason of control only where a country-of-concern government has the power to direct its management or policies. The proposed rule also reaches entities subject, directly or indirectly, to the direction or control of covered individuals or country-of-concern entities, not just governments.
- **Principal place of business:** Under the proposed rules, an entity’s principal place of business also includes the location of the entity’s headquarters and also where it conducts its main business activities. The proposed rule expressly provides that an entity can have more than one principal place of business. Treasury provided an example of a company incorporated and headquartered in the United States whose CEO resides in, and primarily manages the business from, a country of concern, providing that such company’s principal places of business would be both the U.S. and such country of concern.

New “Affiliate” Concept: The proposed rule introduces a new term, “affiliate,” defined to mean a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a person subject to the rule. The proposed rule does not separately define “control” for this purpose. This creates meaningful ambiguity, particularly against the patchwork backdrop of other national security regulations’ distinct definitions of “control.”³ The term is used in two key places:

1. **Restricted party list prohibition:** An otherwise notifiable transaction becomes prohibited if any “affiliate” or “subsidiary” of the covered foreign person is listed.
2. **Definition of “develop”:** The revised definition of “develop” expressly captures activities engaged in “through or in collaboration with” affiliates. Treasury characterizes this as a clarification of, not as a change to, the current OIR’s restrictions related to development, but it provides no explanation of what it means to develop a technology “in collaboration with” an affiliate. The revised definition does, however, expressly include provision of “high-level oversight, direction, approval, conceptual input, or strategic planning in connection with any stage prior to serial production.” Where a covered foreign person has a subsidiary or affiliate engaged in prohibited or notifiable activities, this revised definition will require careful consideration of whether any direct or indirect parent company or other affiliate provides high-level

³ See, e.g., Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.215(b)(1) (“ownership or control” over a foreign affiliate exists where the U.S. person holds 50% or more equity or voting interest, holds a majority of board seats, or otherwise controls the affiliate’s actions, policies, or personnel decisions); Rules and Regulations Under the Securities and Exchange Act of 1934, 17 C.F.R. § 240.12b-2 (defining “control” for purposes of defining when an issuer must report certain sanctions-restricted conduct of its “affiliates” to mean possessing, directly or indirectly, the power to direct or cause the direction of their management and policies, whether through the ownership of voting securities, by contract, or otherwise”); Regulations Pertaining to Certain Investments in the United States by Foreign Persons, 31 C.F.R. § 800.208(a) (defining “control” to mean “the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity,” including to determine, direct, take, reach, or cause certain enumerated decisions).

oversight, direction, approval, conceptual input or strategic planning in connection with the affiliate entity's development of prohibited or notifiable technologies.

Indirect Investments Through Pooled Funds: The commentary to the NPRM states that Treasury “also clarifies that U.S. person investments in venture capital funds, private equity funds, ‘funds of funds,’ or other pooled investment funds with pre-existing investments in a covered foreign person may constitute an indirect covered national security transaction as proposed to be defined in § 851.209(a)(1) through (a)(6), separate and apart from whether the acquisition may be a covered national security transaction under § 851.209(a)(7) [which concerns the acquisition of LP interests in certain non-U.S. pooled investment funds].”

The NPRM does not include any corresponding proposed regulatory text or further commentary beyond this sentence, so it is not yet entirely clear in exactly which circumstances Treasury will, for example, deem the acquisition of a limited partnership interest in a fund that owns stock in a covered foreign person engaged in prohibited activity to be prohibited. The NPRM moves into the regulatory text Note 1 to § 850.210 of the OIR (as proposed § 851.209(e)), which provides that a U.S. person “is not considered to have acquired an indirect equity interest or contingent equity interest in a covered foreign person when the U.S. person acquires a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund and that fund then acquires an equity interest or contingent equity interest in a covered foreign person.” By its terms, however, this addresses only investments a fund makes after the U.S. person acquires its LP interest.

Broader Prohibitions in Existing Sectors: The proposed rule broadens the prohibitions in each of the three sectors already covered by the OIR:

- **AI (now “super intelligence” or “SI”⁴ systems):** The OIR distinguishes between prohibited and notifiable AI investments based on training compute thresholds and designed or intended end uses. The proposed rule eliminates such distinctions. Instead, it treats any development of SI systems as prohibited, regardless of capabilities or end use. Treasury explains that model capabilities can no longer be reliably measured by a single compute threshold, noting that this approach relieves U.S. persons from having to assess a target's technical capabilities. “SI system” also expressly includes generative systems, SI agent harnesses, and embodied SI systems such as robots, autonomous vehicles, and unmanned systems.
- **Quantum information technologies:** The OIR's existing prohibitions remain and expand to include the development of software for quantum computers, and of quantum algorithms and applications, subject to an end-use limitation.
- **Semiconductors and microelectronics:** The OIR's existing prohibitions remain and expand to include the following, while other IC design, fabrication, and packaging activity would remain notifiable:
 - high-bandwidth memory, aligning with export controls under ECCN 3A090;

⁴ The terminology change reflects Executive Order 14434 of September 29, 2026, which directs federal agencies to use “super intelligence” in place of “artificial intelligence” in certain documents.

- radiation-hardened ICs;
- photonic ICs; and
- additional categories of advanced ICs.

New Technology Sectors: The COINS Act expressly mandated the addition of two technology sectors, and Treasury used discretionary authority to propose a third:

- **Hypersonic systems.** The proposed rule prohibits investments involving the development or production of:
 - hypersonic vehicles and weapon delivery systems, defined as capable of sustained flight at Mach 5 or greater;
 - hypersonic propulsion systems and fuels;
 - certain specialized materials;
 - testing facilities; and
 - related digital twin and digital thread technologies.

Investments involving certain sensors, guidance, navigation, and control equipment, software, and other dual-use materials will be notifiable.

- **Biotechnology.** The NPRM adds biotechnology as a prohibited sector, with no notification tier. The proposed scope is broad. It covers the use of biological systems to modify, enhance, produce, or control certain agents and toxins, energetic materials, novel functional materials, pharmaceutical compounds, and biofuels. It also covers the development or production of brain-computer interfaces, biomanufacturing equipment, biological sequencing technology, certain laboratory instruments (specifically, flow cytometers and cell sorters designed for spectral analysis or containing 26 or more detectors or channels, and liquid chromatography mass spectrometry instruments designed for top-down proteomic analysis), bioinformatics tools, and laboratory automation. Treasury acknowledges that restrictions in this sector could have countervailing effects on public health and U.S. businesses. Treasury has specifically requested comment on how the sector could be more precisely scoped.
- **High-performance computing and supercomputing.** Although listed as a new sector, the OIR already prohibits investment in certain advanced supercomputers, and that prohibition would carry over. The proposed rule adds a notification requirement for high-bandwidth, low-latency interconnects.

Additional Restricted Party Lists: The OIR treats otherwise notifiable transactions as prohibited where the covered foreign person is included on certain U.S. Government lists, including the Entity List, the Military End User List, and the SDN List. The proposed rule retains this approach and adds two lists:

- the Department of War's list of Chinese military companies under Section 1260H of the National Defense Authorization Act for Fiscal Year 2021; and

- the Office of Management and Budget’s list of biotechnology companies of concern under the BIOSECURE Act.

It is not clear how significant these additions will be in practice. Many U.S. persons were already concerned about engaging in transactions with entities on the 1260H list and were monitoring the BIOSECURE Act’s implementation.

As noted above, the prohibition also extends to transactions where an affiliate or subsidiary of the covered foreign person is listed. Treasury explains that this is intended to deter listed persons from using subsidiaries to access U.S. investment.

New and Modified Exceptions: The proposed rule adds several exceptions, most of which were mandated in the COINS Act:

- ***De minimis* transactions:** Transactions that do not exceed \$50,000 in the aggregate over the preceding 12 months are excepted from the notification requirement, but not from the prohibition. The COINS Act authorized a de minimis exception and left the amount to Treasury.
- **Financial services:** The following are excepted as secondary or ancillary transactions: bank lending; processing, clearing, or sending of payments; underwriting services, including the temporary acquisition of equity solely to facilitate underwriting; credit rating services; prime brokerage; global custody; and equity research.
- **Intracompany transfers:** The OIR currently excepts transactions between a U.S. person and its controlled foreign entity that support operations not involving covered activities, or that maintain covered activities the controlled foreign entity engaged in before January 2, 2025. The COINS Act includes a similar statutory exception, which the proposed rule implements through a new defined term, “intracompany transfer of funds.” That term would be limited to the provision of cash or credit by a U.S. parent to support a controlled foreign entity’s operations that are not in a notifiable or prohibited technology, or to maintain such technology operations that the controlled foreign entity engaged in before the effective date of the final rule. Treasury has requested comment on what it means to “maintain” operations for this purpose.

Most exceptions currently available under the OIR carry over, including those for passive investments in publicly traded securities, registered investment company securities, and LP interests; derivatives; full buyouts of covered foreign person interests; employment compensation; and certain syndicated debt financings. The exception for binding, uncalled capital commitments also carries over, updated to cover commitments entered into before the effective date of the final rule.

Notably, however, the OIR’s exception for investments in business development companies is not included in the proposed rule. Treasury has requested comment on whether to retain this exception.

New Non-Binding Feedback Process: As required by the COINS Act, the proposed rule would establish a process for requesting feedback on whether a transaction would be a prohibited transaction. As proposed, the process would not extend to whether a transaction is notifiable. A person with a direct financial interest in an actual, non-hypothetical transaction could request either confidential non-binding feedback or anonymized public guidance. Treasury could respond with public guidance or confidential written feedback, or could decline to provide feedback.

The conditions for requesting feedback, set out in proposed §§ 851.901 and 851.902, are demanding. Feedback would be available only for prospective conduct in an actual, not hypothetical, transaction. Although an executed contract would not be required, the material terms of the transaction would need to be set out in a binding written agreement or other binding document. Each request would be limited to a single transaction and would need to include, among other things:

- identification of the requester and each party to the transaction, including relevant intermediaries, financing sources, controlled foreign entities, and any known covered foreign persons;
- a detailed description of the transaction structure (including form of investment, governance and information rights, timing, and completion date) and of the technologies implicated, together with the requester's view as to whether they constitute prohibited technology;
- all operative documents, material term sheets, draft agreements, side letters, and other written materials available at the time of submission; and
- a signed certification that the request is true, correct, and complete, together with a commitment to promptly supplement it if material facts change.

Treasury could request additional information or a meeting, and a request would not be deemed complete until that information is provided. The proposed rule does not set any deadline for Treasury to respond. Feedback would not be binding on Treasury, although Treasury may consider whether a requester sought and reasonably acted consistent with feedback in determining its response to a potential violation. In practice, these conditions may limit the process's usefulness for many transactions: the requirement of a binding document, combined with the absence of a response deadline, may make it difficult to obtain feedback within typical deal timelines, and parties may be reluctant to commit to binding terms before knowing whether a transaction is prohibited.

Enforcement and Transition: The enforcement framework remains largely the same as under the OIR. As directed by the COINS Act, the proposed rule will not apply retroactively, but only from the effective date of the final rule. The OIR as it currently exists continues to govern transactions completed between January 2, 2025 (the OIR's effective date) and the effective date of the final rule. The proposed rule also implements a statutory exception for transactions completed before the COINS Act's enactment on December 18, 2025, while clarifying that such transactions may still be subject to the OIR. Although that exception does not expressly address transactions completed between December 18, 2025, and the effective date of the final rule, those transactions fall

outside Part 851, which applies only prospectively. Treasury has emphasized that nothing in the proposed rule limits its ability to take enforcement action for violations of the OIR, a point underscored by Treasury's recent announcement of its first civil penalty under the OIR, detailed in our recent [client alert](#).

Looking Ahead

The public has until December 7, 2026 to submit comments on the NPRM through the Federal eRulemaking Portal, after which Treasury will review the comments and issue a final rule. Treasury did not indicate when it expects to do so, although the COINS Act directs Treasury to issue its implementing regulations within 450 days of enactment, or by approximately March 2027. Treasury has signaled particular interest in comments on four topics:

- the prohibition covering all SI systems;
- the scope of the biotechnology sector;
- the definition of “parent,” which Treasury is considering expanding to reach certain sub-advisers and general managers; and
- whether to retain the business development company exception.

Although the proposed rule is not yet final, if finalized in its current form, its scope will be substantially broader than the OIR's. Investors and companies with existing or planned exposure to the expanded countries of concern or technology sectors may wish to consider how the proposed rule could affect their businesses. In the meantime, the OIR remains in force.

Simpson Thacher & Bartlett LLP is experienced in navigating international regulatory and compliance issues, including with respect to sanctions, export controls, and foreign investment, and continues to follow developments of the OIR and the COINS Act closely. We are available to discuss further questions on request.

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