

Report from Washington

Changes to the Outbound Investment Rule On the Horizon

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The U.S. Outbound Investment Security Program (the “OIR”) is poised for changes under the much-anticipated National Defense Authorization Act for Fiscal Year 2026 (“NDAA”), the text of which was finally released over the weekend. The final draft of the NDAA, when adopted, would codify the general framework of the OIR but also impose important changes to the OIR—a U.S. Department of the Treasury (“Treasury”) program that regulates U.S. outbound investment in certain sensitive technology areas. For a primer on the OIR, please see our previous [alert](#).

By codifying the OIR, the NDAA reflects a bipartisan, multi-branch commitment to using outbound investment restrictions as a long-term strategy to advance the national interest and maintain a competitive edge in key technological sectors.

Once adopted—and voting could begin as early as this week—Treasury will have 450 days from the effective date to promulgate new regulations. In anticipation of formal rulemaking, asset managers, dealmakers, and investors should consider these updates as part of the diligence and regulatory review process for current and prospective investments. While new regulations are unlikely to be finalized in time to affect any currently contemplated investment activity, they could (and presumably will) be finalized before many investments are exited and therefore could affect investment strategies.

Key OIR Updates

The NDAA would change the OIR in certain respects. Specifically, the NDAA would:

- **Expand the Definition of “Country of Concern”:** Originally and under previously proposed legislation, the term “country of concern” included only China (inclusive of Hong Kong and Macau). The NDAA expands the term to also include Cuba, Iran, North Korea, Russia, and Venezuela. Although U.S. and other jurisdictions’ economic sanctions programs largely prohibit new investments involving companies located or organized in, or those having a sufficient nexus to, these newly added countries, these sanctions could be lifted and make this OIR expansion more impactful for future investment opportunities.
- **Potentially Change the Technical Parameters for Prohibited and Notifiable Transactions:** Prior proposals largely incorporated the OIR’s original technical and end-use parameters for when a transaction is “prohibited” or “notifiable,” but the NDAA removes those parameters, leaving the specifics to

be determined by new regulations. In theory, this could lead to a broad expansion of the types of transactions that are deemed prohibited or notifiable under the OIR.

- **Except Underwriting and Related Activities:** Unlike previous legislative proposals and the current OIR, the NDAA explicitly excepts “the temporary acquisition of an equity interest for the sole purpose of facilitating underwriting services.” This has been an issue critical to the global capital markets, as the current OIR and guidance suggest that such transactions might be covered despite good arguments to the contrary.
- **Create Additional Exceptions:** Like previous legislative proposals, the NDAA excepts certain transactions not expressly excepted under the current OIR, including: (1) transactions determined by Treasury to be *de minimis*; (2) certain ancillary transactions by financial institutions; and (3) transactions “secondary” to covered transactions, including underwriting services as described above.
- **Add Hypersonic Systems as a New Sensitive Technology:** Like prior iterations of the legislation, the NDAA adds “hypersonic systems” to the list of covered technology sectors. Thus, when regulations are promulgated, the OIR will cover the hypersonic systems, semiconductors and microelectronics, quantum computing, and artificial intelligence sectors. The specifics of what types of products and technologies are covered will be determined by the regulations. Although not currently defined in the bill, hypersonic systems is generally understood to relate to the delivery of advanced weapons at high speeds and is a key area of geostrategic competition for the United States.

While President Biden’s 2023 executive order issuing the OIR clearly focused on China and certain technologies within highly specific technical parameters, Congress is, at a minimum, clearly comfortable expanding the OIR beyond what the Biden administration originally intended. That said, certain changes open the door for both expansion and constriction. Perhaps most importantly, under the NDAA, Treasury could expand or change the scope of technologies that would bring a transaction within the scope of the OIR, but it could also eliminate the technical specifications altogether.

Additional OIR Updates

Additional updates from the NDAA that were not contemplated in prior OIR-related legislation include:

- **Guidance Provision:** The bill requires future regulations to provide for a process to request non-binding feedback on a confidential basis or anonymized guidance to the public. The current OIR does not provide for this, and this mechanism (once available) could help U.S. persons navigate changes in regulations and better understand Treasury’s views on certain transactions.
- **Public Database of Covered Foreign Persons:** Treasury is authorized to create a public database of “covered foreign persons,” but the NDAA also includes authority to establish a mechanism for such persons to petition for removal from or inclusion in the database. The creation of this database is discretionary (not required).

Additional but anticipated changes to the OIR (contemplated in previous legislative proposals) include the following:

- The NDAA would require Treasury to submit a report to Congress within 18 months identifying all enforcement actions and notifications to date, including those under the current OIR, and assess the overall impact of the program in its current form.
- The NDAA would provide for a voluntary self-disclosure process for U.S. persons to report potential violations of the regulations.

Sanctions Provisions

In addition, the NDAA would add and require updates to existing U.S. sanctions programs, including some related to the OIR.

- **Discretionary Sanctions based on OIR:** The NDAA would authorize the President to impose sanctions on “any foreign person determined to be a covered foreign person” pursuant to the powers granted under the International Emergency Economic Powers Act. This section also requires the President to submit a report to Congress within one year regarding whether any entity currently included on the Non-SDN Chinese Military-Industrial Complex Companies (“NS-CMIC”) List is a “covered foreign person.” U.S. persons are prohibited from engaging in transactions involving the purchase or sale of any publicly traded securities, and derivatives of such securities, of entities on the NS-CMIC List.
- **Expansion of NS-CMIC List:** The NDAA would also require the President to submit a report to Congress within two years regarding whether any foreign persons on the following U.S. government blacklists should also be included on the NS-CMIC List: the Military End-User List; the Section 1260H List; the Entity List; the Covered List; and the Uyghur Forced Labor Prevention Act Entity List. The addition of the Federal Communications Commission’s Covered List and the Department of Homeland Security’s Uyghur Forced Labor Prevention Act Entity List in the latest version of this bill demonstrates an effort to harmonize U.S. government sanctions lists across agencies.
- **Fentanyl Sanctions Act Expansions:** The NDAA would bolster the Fentanyl Sanctions Act by expanding the President’s designation authority through an amended definition of “foreign opioid trafficker,” which now includes Chinese entities and senior Chinese officials, as well as other foreign government instrumentalities determined to have knowingly engaged in or supported significant opioid-trafficking activity. While distinct from the Office of Foreign Assets Control’s authority to designate persons as Specially Designated Nationals, designated persons under the Fentanyl Sanctions Act may be subject to a range of restrictions and/or prohibitions in dealings involving U.S. persons.
- **Caesar Act Repeal:** As anticipated, to effectuate the lifting of U.S. sanctions against Syria, the NDAA would repeal the Caesar Syria Civilian Protection Act of 2019, which, among other things, required mandatory sanctions on foreign persons who enabled the Assad regime and profited from the Syrian Civil

War. As mentioned in a prior [alert](#), the State Department had already issued a 180-day waiver of Caesar Act restrictions, which was ultimately replaced by a November 2025 [interagency advisory](#) granting sanctions and export controls relief for Syria.

Looking Ahead

Although outbound investment-related legislation did not make it into last year's NDAA, it appears likely to be included in this year's given the bipartisan focus on this issue across both chambers of the U.S. Congress. This version of the legislation leaves much to the regulatory process. However, the inclusion of five additional "countries of concern" suggest that outbound investment restrictions will remain a tool of economic statecraft that can be deployed across different contexts in foreign policy.

Meanwhile, U.S. allies and partners continue to contemplate restrictions on outbound investment. The European Commission issued a [recommendation](#) in January 2025 that called on EU member states to review outbound investment from an economic security perspective with a focus on the three main sectors covered by the current OIR in the United States (semiconductors, artificial intelligence, and quantum technologies). Notably, the NDAA also has a provision calling on Treasury, along with other relevant U.S. agencies, to coordinate with U.S. allies and partners in developing the OIR and develop a strategy for multilateral engagement, suggesting that there could be increased conversation and collaboration among outbound investment regimes going forward.

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 this new outbound investment review regime closely. We are available to discuss further questions on request.

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