



CFIUS UPDATES AND U.S. OUTBOUND INVESTMENT REGIME PREVIEW

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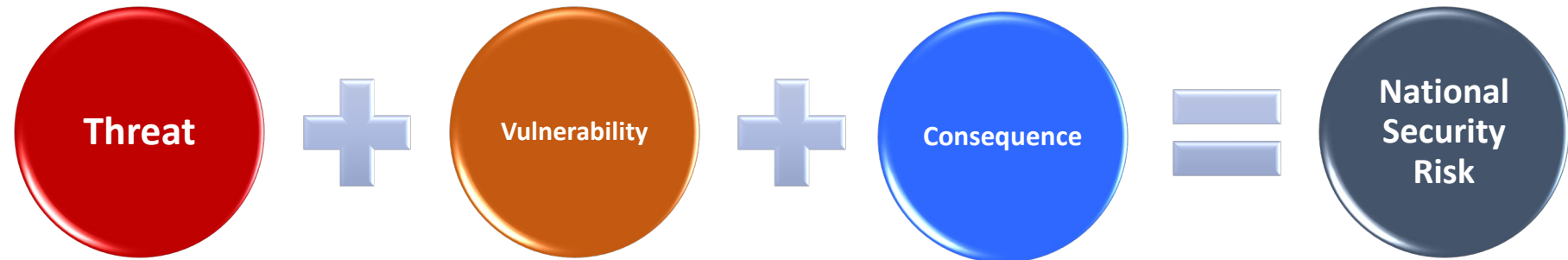
Overview of CFIUS's Expanding Influence

01

CFIUS Overview

- **CFIUS** is an inter-agency committee authorized to review foreign direct investment in the United States and **block** transactions or **impose measures to mitigate** any threats to U.S. national security.
- The Committee has existed since 1975, but has been significantly more active in recent years.
- In 2018, the Foreign Investment Risk Review and Modernization Act (“**FIRREA**”) expanded the categories of covered transactions, updated the review process, and made CFIUS review mandatory in certain cases.
 - CFIUS review now includes certain foreign **non-controlling** (equity) investments in U.S. businesses that deal with **critical technology, critical infrastructure, or the sensitive personal data** of U.S. citizens (“**TID**” businesses).

National Security Risk Assessment: The Core of the CFIUS Analysis



Threat: Intent and capabilities of a foreign person to take action to impair national security.

Vulnerability: Extent to which the nature, location, or relationships of the U.S. business presents susceptibility to impairment of national security.

Consequences: Effect on national security from exploitation of vulnerabilities

- The CFIUS regulations specifically address the national security risk assessment that the Committee undertakes.
- In order to provide additional information to evaluate the national security risk, the **National Intelligence Council** (“NIC”) produces a classified **National Security Threat Assessment** (“NSTA”) for transactions under CFIUS review:
 - Made up of representatives from the Intelligence Community;
 - NIC leads the effort to produce National Intelligence Estimates and other documents.

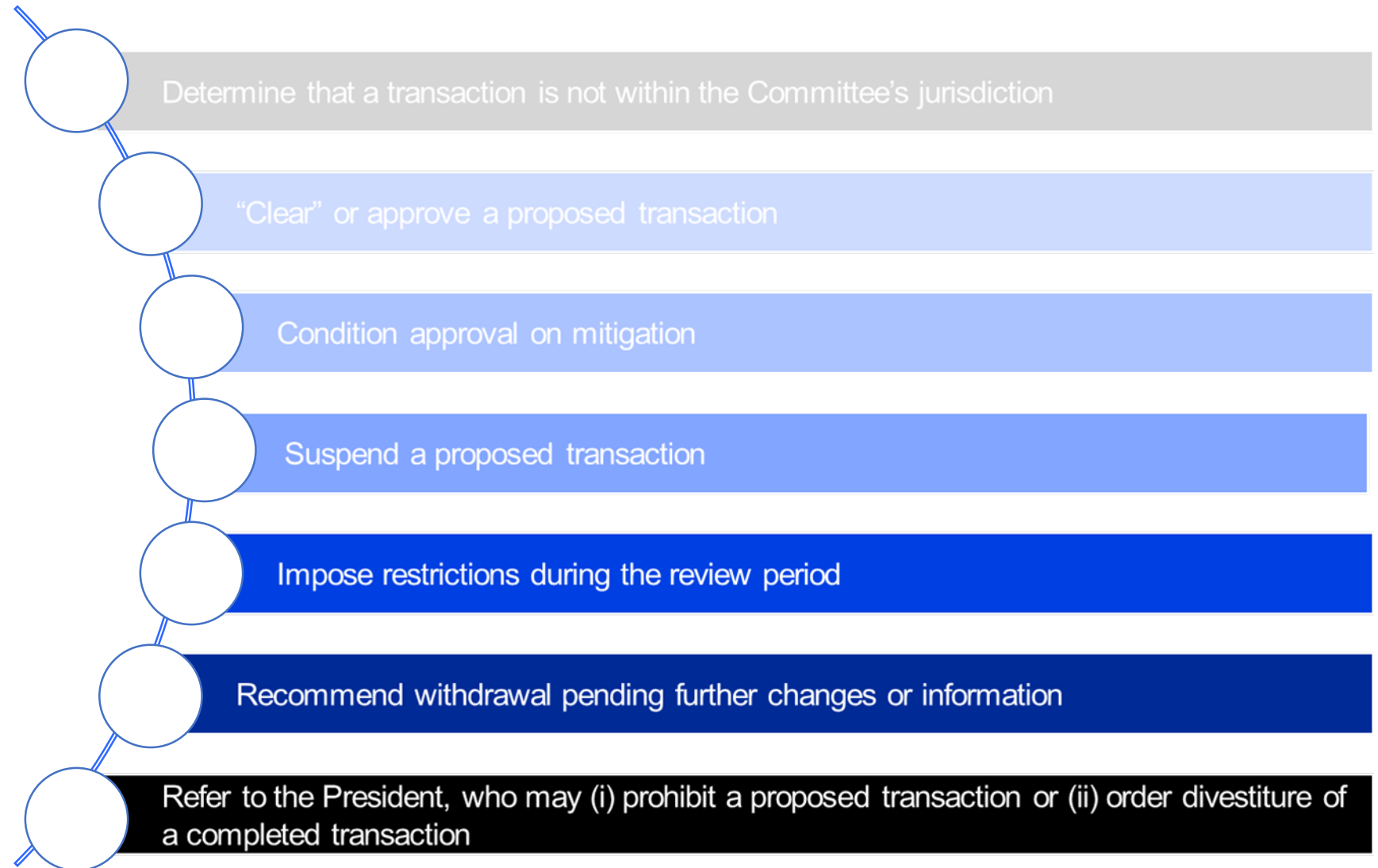
Timeline

- Committee typically takes 1-2 weeks to formally accept a CFIUS filing.
- CFIUS issues a letter designating lead agency and starts the clock for the initial review period.

- CFIUS may continue review with a 45-day investigation period.
- CFIUS may ask additional questions, which require a response in 3 business days.
- CFIUS may extend investigation for 15 days for “extenuating circumstances” or may request the parties withdraw and refile.

Submit Draft	Submit Notice	Initial Review	Investigation	Presidential Review
<ul style="list-style-type: none"> • Not required to submit draft filings, but routine practice. • Typically takes 3-4 weeks to collect the necessary information to prepare the draft filing • Committee typically takes 1-2 weeks to review draft filings. 		<ul style="list-style-type: none"> • CFIUS undertakes an initial 45-day review period. • CFIUS may ask questions, which require a response in 3 business days. 		<ul style="list-style-type: none"> • While virtually all reviews conclude at the investigation phase, the President has the authority to review and block transactions during a 15-day period following the investigation phase. • No presidential decisions were made in 2021 or 2022.

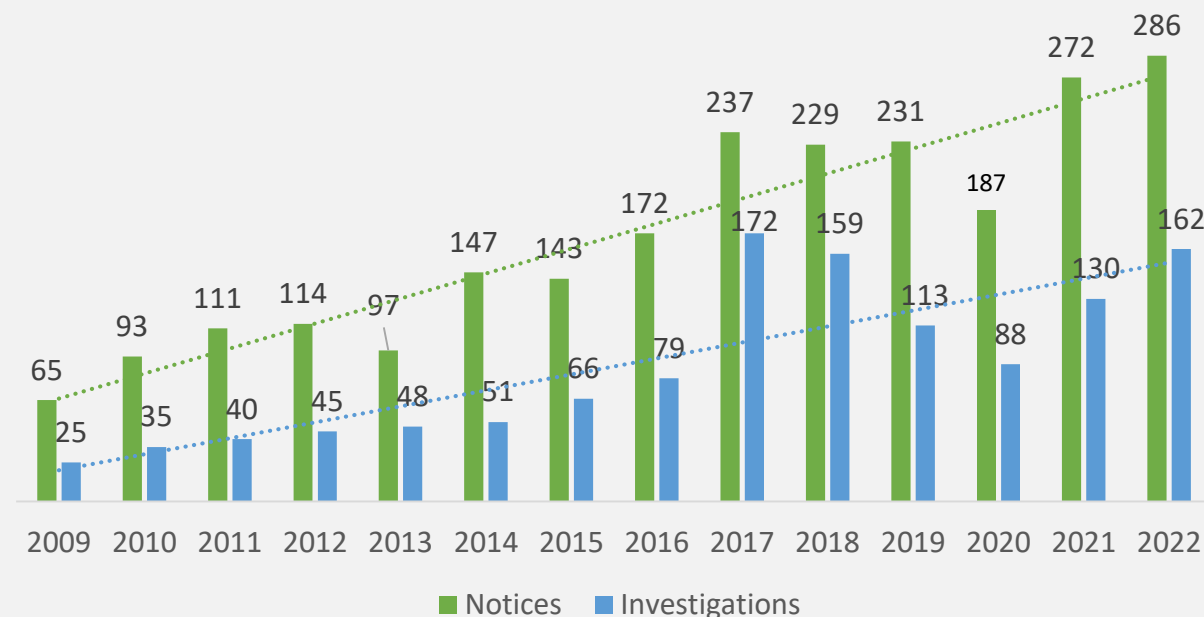
Potential CFIUS Outcomes



Over the past year, CFIUS's influence has continued to expand in meaningful ways.

- The annual number of CFIUS reviews and investigations has been rising overall in recent years, particularly since the 2018 Foreign Investment Risk Review and Modernization Act (“**FIRREA**”) introduced mandatory review.
- In the September 2022 Executive Order (“E.O.”), President Biden directed CFIUS to focus on specific factors, including **critical U.S. supply chain resilience, U.S. technological leadership, aggregate investment trends impacting national security, cybersecurity risks, and risks to U.S. persons' sensitive data.**
- Recently, CFIUS clarified in FAQ guidance that it can request information on **all foreign investors, including limited partners** without significant governance rights.
- CFIUS also issued guidance that means parties can effectively **no longer use springing rights where this is a mandatory filing.**
- CFIUS recently released a final rule **adding 8 additional military installations** to its list that covers real-estate transactions within a 100-mile radius of the bases, which became effective September 22, 2023. Similarly, U.S. states have quickly passed laws impacting real estate transactions.

CFIUS Notices and Investigations by Year



CFIUS's Expanding View of National Security Factors

02

National Security Policy Shapes The CFIUS Landscape



“We are identifying and investing in key areas where private industry, on its own, has not mobilized to protect our core economic and national security interests We are securing our **critical infrastructure**, advancing foundational **cybersecurity** for critical sectors, . . . working with the private sector to improve **security defenses in technology products** . . . and securing our **supply chains**.”

“We are countering intellectual property theft, forced technology transfer, and other attempts to degrade our technological advantages by **enhancing investment screening** [and] export controls”

U.S. National Security Strategy
Released Oct. 12, 2022

The National Security Strategy addresses various issues, but identifies China as the “pacing challenge.”

- On October 12, 2022, the Biden Administration released its long-awaited National Security Strategy.
- Two principal challenges identified:
 - **(i) geopolitical competition** (e.g., China, Russia) and **(ii) transnational challenges** (e.g., climate change, renewable energy, COVID-19, food insecurity, supply chains).
- Introduces a **modern industrial and innovation strategy**.
- Three strategic priorities:
 - **Domestic investment** in key technology areas,
 - **Strengthening alliances and building coalitions**, and
 - **Influencing global rules** on emerging technology and trade.
- Significantly, the Biden Administration has **distinguished** the threats posed by Russia and China, with Russia seen as a threat to **regional stability** while China is viewed as the **pacing challenge**.



Russia and the PRC pose different challenges. Russia poses an immediate threat to the free and open international system The PRC, by contrast, is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective.

National Security Strategy



CFIUS E.O.: Specific Factors for Review

- On September 16, 2022, President Biden issued an E.O. directing CFIUS to specifically consider **5 factors** in the Committee's national security reviews:
 - **The resilience of critical U.S. supply chains** that may have national security implications, including those outside of the defense industrial base;
 - **U.S. technological leadership** in areas affecting U.S. national security, including but not limited to microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies;
 - **Aggregate industry investment trends that may have consequences** for a given transaction's impact on U.S. national security;
 - **Cybersecurity risks** that threaten to impair national security; and
 - Risks to **U.S. persons' sensitive data**.
- This was the **first-ever E.O. directing CFIUS to consider specific factors**—and appears to highlight the Biden Administration's efforts to ensure certain substantive factors are considered in the national security review, as well as to increase transparency in the CFIUS review process.
- The E.O. **does not** alter CFIUS's processes or legal jurisdiction, but rather **elaborates on certain existing factors** that the Committee is mandated by statute to consider.

A Shifting National Security Strategy Reinforces Trendlines

“We are pursuing a modern industrial and innovation strategy to invest in our economic strength and technological edge at home, which is the deepest source of our power in the world.”

Jake Sullivan
National Security Strategy

The CHIPS and Science Act of 2022 authorized approximately \$280 billion in spending over 10 years to promote the manufacturing of semiconductors in the United States and to promote R&D in a range of high technology sectors, subject to prohibitions on using U.S. incentives to build facilities in China.

- This legislation marks a historic departure for the U.S. government, which until recently had not significantly restricted private companies’ strategies for offshoring and outsourcing technology outside traditional export control regimes.

The Inflation Reduction Act of 2022 provides tax incentives for a wide range of renewable energy technologies (including wind, solar, and battery storage) and production facilities. Incentives increase where domestic content thresholds are met, potentially setting the stage for trade disputes.

Executive Order on Advancing Biotechnology and Biomanufacturing

demonstrates the Biden-Harris Administration’s willingness to implement industrial policy via executive action.

CFIUS Enforcement Guidance & Emerging Trends

03

Formal Guidance from the Treasury on CFIUS Enforcement and the Penalty Process

Violations

- **Failure to file** a timely mandatory declaration or notice.
- **Non-compliance with CFIUS mitigation measures.**
 - Mitigation measures often involve access rights to IP, technology, sensitive information, and the systems holding such information.
- **Material misstatement, omission, or false certification** affecting information filed with CFIUS.

Penalties

Potential Penalties:

- For failure to comply with mandatory declaration or mitigation requirements, **up to \$250,000 or the value of the transaction**, whichever is greater; and
- For material misstatements, omissions, or false certifications, **up to \$250,000 per violation**.

Precedent Penalties:

- In 2018, a **\$1,000,000 penalty** for repeated breaches of a mitigation agreement;
- In 2019, a **\$750,000 penalty** for violations of a 2018 CFIUS interim order;
- Informally, the Committee has acknowledged that **penalties have already been issued under the new enforcement guidelines**.

Sources of Information

- **RFIs:** CFIUS may request information from relevant parties, who earn mitigation credit by cooperating.
- **Tips:** CFIUS provides phone and email hotlines for the public to share tips on transactions under review, non-notified transactions, or breaches of mitigation agreements.
- **Subpoenas:** The Committee has authority under the DPA to obtain relevant records and information.
- **Self-disclosures:** Similar to DOJ and other agencies, CFIUS factors self-disclosure into its enforcement actions.

Aggravating & Mitigating Factors

- **Accountability and future compliance** – impact of enforcement action on protecting national security and promoting compliance.
- **Harm** – extent to which the conduct harmed U.S. national security.
- **Negligence, awareness and intent** – level of culpability; efforts to conceal/delay sharing information; involvement of senior personnel.
- **Persistence and timing** – time before CFIUS discovered the violation; frequency and duration of conduct.
- **Response and remediation** – self-disclosure and cooperation; efforts to identify root cause and mitigate.
- **Sophistication and Record of Compliance** – history and familiarity with CFIUS; compliance resources; ability to implement mitigation efforts.

Emerging Trends from CFIUS Annual Report

	2020	2021	2022 (Δ from 2021)
Declarations	126	164	154 (↓6%)
Notices	187	272	286 (↑5%)
Total Filings	313	436	440 (↑0.9%)

Just the numbers: Total number of filings before the Committee stayed on pace with 2021.

Numbers in context: Substantial *increase* in the number of filings relative to lower M&A activity and declining foreign direct investment in the U.S. year over year.

A significant increase in mitigation measures + decline in use of short-form declarations and declaration clearance rates may reflect:

- Increased market hesitation to use the declaration process,
- A more aggressive Committee, both in terms of review and on mitigation.

	2021	2022
Concluded Action After Adopting Mitigation Measures	26	41 (↑58%)
Adopted Mitigation Measures for Withdrawn and Abandoned Notices	2	3
Conditions Imposed on Withdrawn Notices Without Mitigation Agreements	2	5
Measures Imposed on Notices from Prior Years	1	3
Total	31	52 (↑67%)

Key Commentary from CFIUS Annual Conference (Sept. 2023)

“While promoting compliance remains the goal, robust enforcement with cases of noncompliance is key.”

- *U.S. Secretary of the Treasury Janet Yellen*

- Renewed focus on ensuring **ongoing compliance** and **pursuing enforcement** for non-compliance.
- Increasing use of **third-party monitors and auditors** in some mitigation agreements.
- **On-site compliance checks** and **warning letters** for violations of mitigation agreements increasing.
- Additional resources are being dedicated **to identifying non-notified transactions**.
- Additional **proposed rules to current regulations** are likely in the near future.

Expanding Jurisdiction: Springing Rights, Limited Partners, and Real Estate

04

Recent CFIUS FAQs clarify guidance on “springing rights” and LP information

Changes to...

Using “springing rights” to control timing of filings

- For **mandatory** filing purposes, CFIUS now considers a transaction’s “completion date” to be the date on which the foreign party obtains **any** equity interest in the U.S. business, **regardless of when other rights vest** (e.g., governance rights).
 - In practice, this means **parties can no longer use springing rights** to delay the onset of a *mandatory* CFIUS filing.
 - Though this update does not impact the timeline of **voluntary** filings, it represents a general change that **CFIUS no longer distinguishes between initial passive equity investments and future CFIUS-triggering rights**.
-

Requests for LP information

- CFIUS recently confirmed it has the right to request information on **all** foreign parties involved in a transaction, **including limited partners**, notwithstanding any confidentiality agreements between the LP and the foreign investor.
- CFIUS will request LP information on a **case-by-case basis** and may consider the LP’s nationality, identity, and capabilities.
- Customarily, entities have disclosed LPs with 5% or more ownership and/or non-customary rights, but this update **may change that approach**.

Scrutiny into recent real estate deals may lead to further restrictions.

- Under FIRRMA, CFIUS has the authority to review **real estate purchases by foreign investors** if the property is near certain military installations or other critical infrastructure, such as ports.
 - For **most facilities**, the restriction only applies to property located within a **1-mile radius** (the “Part 1” list);
 - But for **particularly sensitive installations**, the radius expands to **100 miles** (the “Part 2” list).
- Recently, a controversy arose when the Chinese-owned Fufeng Group bought land 12 miles from an Air Force base in North Dakota.
 - Military officials expressed serious concern about the transaction, but **CFIUS concluded that it did not have jurisdiction since the base was not on the list of restricted facilities.**
 - Local officials have barred any development of the property, though Fufeng may pursue future legal action.

Federal and State Responses to Real Estate Acquisitions by Foreign Investors

CFIUS

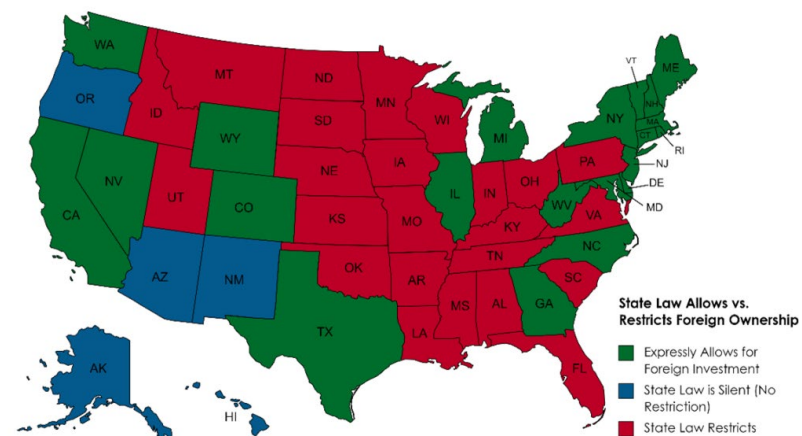
- 8 additional military installations were recently added to the “Part 2” list that covers transactions within a 100-mile radius (effective Sept. 22, 2023).
- Importantly, many military installation names have been updated recently, and CFIUS’s Geographic Reference Tool is not always updated.

Congress

- More than a dozen bills have been introduced in Congress to address concerns about foreign acquisitions of U.S. real estate.
- The bills range in severity from increased reporting requirements to wholesale bans on certain purchases.

States

- A number of states have responded with their own legislation:
 - In May, a Florida law barred foreign principals from “countries of concern” (including China, Russia, Iran, North Korea, Venezuela, and Syria) from acquiring an interest in agricultural property or property near sensitive military sites.
- As shown below, over 20 states have legislation restricting foreign ownership of U.S. land, and actions to amend or enact such legislation is pending in many other states.¹



1. Statutes Regulating Ownership of Agricultural Land, the National Agricultural Law Center, available at <https://nationalaglawcenter.org/state-compilations/aglandownership/>.

General contours of state legislation restricting certain foreign real estate activities

The bills introduced or passed in state legislatures vary in scope. They tend, however, to share certain core areas of focus:

- **Type of land restricted**—e.g., agricultural land, land with proximity to military installations, or all real property.
- **Class of foreign person restricted**—e.g., foreign governments; government officials and political parties; designated military companies; foreign companies and nationals; among others;
- **Jurisdictions targeted**—e.g., federally designated “foreign adversaries,” which includes China and the Hong Kong SAR, Cuba, Iran, North Korea, Russia, and the Nicolás Maduro Regime of Venezuela; or broader or narrower lists of restricted jurisdictions;
- **Types of activities restricted**—e.g., whether the restrictions apply to ownership/purchases, direct and indirect investments, and/or leaseholds;
- **Retroactivity and forced divestments**; and
- **Specific exceptions and carve outs**

Spotlight on Florida Senate Bill 264 (2023) (“SB 264”) and the constitutional challenge in *Shen v. Simpson*

SB 264, which took effect on July 1, 2023, has garnered significant attention as it is one of the most restrictive of the new wave of state legislation that restricts foreign acquisition of real estate.

- **Prohibitions on covered foreign persons owning or acquiring interests in land in Florida**
 - **“Foreign principals”** cannot “directly or indirectly own, have a controlling interest in, or acquire by purchase, grant, devise, or descent”:
 - any **“agricultural land”** in the state;
 - real property **within ten miles** of any **“military installation”** or **“critical infrastructure facility”** (such as airports, seaports, power plants, or refineries).
 - Certain **China-related persons** cannot “directly or indirectly own, have a controlling interest in, or acquire by purchase, grant, devise or descent” **any real property in Florida**, including land, buildings, fixtures, and all other improvements to land.
- **Registration requirement**
- **Four exemptions**—e.g., ownership and interests in land or real property acquired prior to July 1, 2023; *de minimis* indirect interest; land or real property interests acquired by certain means; and certain residential real property.
- **Constitutional challenge in *Shen v. Simpson***
 - In May 2023, a constitutional challenge was launched against SB 264, contending that it violates the Fourteenth Amendment’s Equal Protection and Due Process Clauses and the Supremacy Clause, as well as the Fair Housing Act. The developments in *Shen* are being closely followed as an indication not only of whether SB 264 will survive the constitutional challenge, but also as an indication of the potential viability of other similar state laws.

Key Takeaways for Investment Activity

- CFIUS is a **prominent** national security tool, and its role is only increasing as it **broadens its focus**, **expands its authorities**, and **increases enforcement**.
- Increased importance of **national security due diligence** to determine appropriate calibration of risk:
 - CFIUS (and **potential outbound investment**) due diligence should be prioritized given the Administration's focus on this area; and
 - Certain sectors are higher risk, specifically semiconductors and microelectronics, supercomputing and quantum computing, AI, biotech, EV and battery technology, nuclear fusion, hypersonics and space technologies.
- There is potential for **increased transaction timelines**.
- Heightened investor scrutiny by the USG, particularly in transactions with a China nexus:
 - Potential for increased risk in **non-notified transactions** coming to attention of CFIUS and being subject to mitigation or unwinding; and
 - Increased focus on CFIUS **enforcement** also impacts risk calculus for voluntary filings—and the import of confirming whether there are mandatory filing obligations (e.g., target reps and due diligence).
- Guidance on **springing rights** and **LP review** creates meaningful impact on deal constructs and timelines, while **real estate** creates an increasingly complex analysis that may need to consider state requirements as well as CFIUS regulations.

Looking Ahead: Outbound Investment Review

05

Outbound Investment



“. . . the United States now is undertaking a period of **historic investment in our infrastructure**, in our people, in our manufacturing, and **in our supply chain**. And as a result, we have a very strong economy.

However, it is **not intended to hinder China's economic progress**. We believe a strong Chinese economy is a good thing. And President Biden has been crystal clear repeatedly on this point; we seek **healthy competition with China**. A growing Chinese economy that plays by the rules is in both of our interests. That said, we have to make sure there is a **level playing field** and we will at all times do what we need to do to **protect our workers**.”

- U.S. Secretary of Commerce Gina M. Raimondo

Outbound Investment Restrictions: Executive Action

The Restrictions

- On August 9, 2023, the Biden Administration issued an **Executive Order outlining controls on outbound U.S. investments in certain Chinese entities**, accompanied by an Advance Notice of Proposed Rulemaking (“ANPRM”) for public comment.
- **No immediate new legal obligations or restrictions** were imposed.
- In broad strokes, the program will:
 - **Prohibit U.S. persons from directly or indirectly entering into certain types of transactions with a covered foreign person** engaged in activities involving the specified covered national security technologies and products; and
 - **Require notification to Treasury by U.S. persons** who directly or indirectly enter into the same types of transactions for a broader set of defined covered national security technologies and products.
- Initial target sectors include:
 - **Semiconductors and Microelectronics**;
 - **Quantum Information Technologies**; and
 - **Artificial Intelligence (“AI”) Systems**.
- Countries of concern identified as the **People’s Republic of China**, including the Special Administrative Regions of **Hong Kong** and **Macau**.

The Implementation Process

- **No effective date** set as of yet and no clear timeline for implementation.
- The ANPRM included a broad list of **83 specific questions** that Treasury posed to the public for comment. Comments were due on September 28, 2023.
- At some undefined point after public comments are received and digested, Treasury will issue a **Proposed Notice of Rulemaking setting out the near-final version** of the regulations and allowing for one more period of public comment.
- The actual rules will come into effect at some point after that public comment period ends, which is **very likely months away**.
- **Allied countries are likely to develop similar restrictions**.
 - A G7 statement on May 20, 2023, acknowledged that “appropriate measures designed to address risks from **outbound investment could be important to complement existing tools**.”
 - The European Commission listed outbound investment a priority for 2023.
 - In May 2023 at the U.S.-EU Trade & Tech Council, the parties agreed to **coordinate any such outbound investment policies**.

Outbound Investment Restrictions: ANPRM Comments from Key Stakeholders

Areas of concern:

- Need for **objective standards and clear definitions** to determine who are covered investors and foreign parties.
- Parties need clear guidance for **due diligence and compliance**, including the ability to rely on representations.
- Regulations should recognize the **difficulty of accessing foreign financial information** for diligence purposes.
- Covered activities are drawn too broadly and need **protections/exemptions** for passive investments, third-party financial services, intracompany transfers, and academic/research collaborations.
- Covered products should be **more clearly defined** by objective technical parameters and account for dual uses of innovative AI and quantum technologies.
- Regulations **need alignment** with CFIUS, EAR, CHIPS, and sanctions authorities, as well as international cooperation to prevent confusion and loss of competitiveness.

Representative remarks:

- “[The proposed definitions of “covered foreign person”] will inevitably establish a set of facts that U.S. investors will **have to assess for every active investment** they make.”
- “[Treasury should] **consider spelling out what diligence** U.S. persons should undertake.”
- “Treasury should **make explicit that transactions** undertaken by financial institutions that are not the primary investment . . . are **excepted from the scope.**”
- “**Dual-use goods** may be used to create an AI system . . . for example, the proposed definition of “AI systems” would capture basic laptops and gaming systems such as an X-Box.”
- “In the **absence of parallel regimes**, foreign entities can replace U.S. financing and technological expertise as the program is implemented.”

Outbound Investment Restrictions: Potential Restrictions from Congress

The Restrictions

- **Cornyn-Casey Outbound Investment Transparency Act**
 - Included as part of the Senate's version of the **FY 2024 National Defense Authorization Act**.
 - Would require U.S. firms to notify Treasury about investments in covered sectors, such as **semiconductors, AI, quantum technology, hypersonics, satellites, and lasers** in countries of concern—**China, Russia, Iran, North Korea**.
 - Notification regime only, but **includes more sectors and countries of concern** than the Biden Administration's E.O. and ANPRM.
- **House Financial Services Committee Chairman Patrick McHenry** wrote Treasury Secretary Yellen opposing the Administration's outbound investment proposal.
 - Questioned the legality of the ANPRM's use of IEEPA as its statutory authority.
 - Requested that Treasury re-issue the ANPRM under OFAC or another appropriate office.
 - Questioned the value of a regime intended to decrease investment in China.
 - Argued that the program's concerns are already covered by existing intellectual property protections, inbound investment screening, and export control regimes.

The Implementation Process

- Cornyn-Casey Outbound Investment Transparency Act may **yet make it into the final NDAA**.
- The act **faces headwinds from key players in both parties**:
 - Some argue that **tougher measures** are needed;
 - Others claim that such measures would be **ineffective at best** and advantageous to China at worst.
- The **legislative fate of Congressional restrictions remains to be seen** in light of the actions taken by the White House.
- Additional action by Congress in this space **cannot be wholly discounted and may indeed be compatible** with the Biden Administration's proposed regulations.

HFSC Chair Patrick McHenry's Letter

- In a September 27, 2023 letter, the **Chair of the House Financial Services Committee** expressed legal objections and significantly different policy conception of investment in China

Legal objections:

- Using IEEPA to block investments may be a novel use of emergency authorities (potentially exposing regulations to litigation).
- Office of Investment Security may be restricted to only implementing inbound work.

Policy objections:

- China is not significantly intent on exploiting U.S. outbound investment,
- Program's concerns already served by existing intellectual property, *inbound* investment, and export control regimes,
- Regulations penalize U.S. private control of Chinese companies, which should be encouraged,
- Sanctions regime is more suited to this kind of work.



“If we oppose China’s state-run economy, we want **more private investment** – not less. Of those private investors, we want **more of them to be Americans** – not fewer. And if we are truly concerned by China’s technology companies, we want as **many Americans as possible steering them**”

- House Financial Services Committee Chair Patrick McHenry

Looking Ahead: De-coupling v. De- risking

06

U.S. Geopolitical Perspectives

“The economic relationship between the U.S. and China is one of the most significant in the world. We share \$700 billion dollars of trade and I concur with you that it is profoundly important that we have a stable economic relationship which is to the benefit of both of our countries and in fact what the world expects of us. It's a complicated relationship; it's a challenging relationship. We will of course disagree on certain issues, but I believe we can make progress if we are direct, open, and practical.

--U.S. Commerce
Secretary Raimondo,
28 Aug 2023

De-coupling

- Proponents of **de-coupling** see the U.S. and Chinese economic and political models as **incompatible** necessitating separation of U.S. and China entities.
 - U.S. officials, however, continue to state their views that de-coupling is neither desirable nor feasible.
 - The Secretaries of State and Treasury have both made recent statements to this effect.
- On an individual basis, however, **de-coupling may make sense for businesses whose operations attract significant regulatory scrutiny**.
 - In these cases, reduced scrutiny may be worth the cost required to separate entities, IP, technology, infrastructure back-office operations, and supply chains.

De-risking

- Proponents of **de-risking** recognize that U.S. companies will continue to do business in China, but advocate for **better safeguards** in these activities.
- De-risking requires careful thought as to how to effectively segment, but not fully separate:
 - Business operations;
 - Processes;
 - Technology (including IP);
 - Networks and system infrastructure; and
 - Data flows.
- Recent **expansions to Chinese national security authorities and raids** on the Chinese offices of U.S. firms highlight these challenges:
 - Data flows from China to the U.S. can trigger Chinese scrutiny.
 - Meanwhile, Chinese officials could gain access to sensitive parent-company information by seizing servers at Chinese subsidiaries.

China Perspectives

“Given the high degree of integration between the Chinese and US economies and their closely entwined interests, the two countries should respect each other, coexist in peace and pursue win-win cooperation.”

– President Xi; 9 Oct 2023

In recent years, China has enacted **national security laws** impacting the operations of foreign businesses, the Cyber Security Law (2017), the Export Control Law (2020), the **Provisions on the List of Unreliable Entities (2020)**, the Anti-Foreign Sanctions Law (2021), the Data Security Law (2021), the Personal Information Protection Law (2021), and the **Amendment to Counter-Espionage Law (2023)**, among others.

Counter-Espionage Law (2023)

- Revised in April and enacted from 1 July 2023
- A **broader definition of espionage activities** to capture the following activities:
 - defect to an espionage organization or its agent
 - cyberattack, intrusion, interference, control or destruction, among others, against a state organ, secret-involved entity or critical information infrastructure, etc.
 - espionage against a third state within the territory of China, or by making use of citizens, organizations or other conditions of China, which endangers the national security of China
- Include **additional investigation and handling measures** in counterespionage works:
 - retrieve electronic data
 - summon relevant person
 - inquire property information of the suspect
- Enhance **inter-agency cooperation** against cyber espionage activities
- Adding **additional penalties and measures**

Unreliable Entity List (UEL)

- The Ministry of Commerce (MOFCOM) announced the **Provisions on the List of Unreliable Entities** on 19 September 2020.
- Factors to consider when adding a foreign entity on UEL:
 - the extent of danger to China’s national sovereignty, security or the development interests of China;
 - the extent of damage to the legitimate rights and interests of Chinese entities;
 - whether the internationally accepted economic and trade rules are followed, and other factors.
- Measures that could be taken on the entities on UEL:
 - restriction or prohibition on import or export activities;
 - restriction or prohibition on investments in China;
 - restriction or prohibition on the entry of the entity’s personnel or vehicles into China;
 - restriction or cancellation of work permit, residence qualification of the entity’s personnel in China;
 - fine and other necessary measures.
- On 16 February 2023, MOFCOM announced its first ever use of the UEL, placing **Lockheed Martin Corporation** and **Raytheon Missiles & Defense** on the UEL for their arms trade sales to Taiwan.

Additional Resources

Client Alerts & Articles:

- Gibson, Dunn & Crutcher LLP Client Alert, "[The Rise of State Laws Restricting Foreign Entities from Acquiring Property: Another Front in U.S.-China Tensions and the Constitutional Challenge of Florida SB 264 in Shen v. Simpson](#)" (Sept. 12, 2023).
- Stephenie Gosnell Handler et al., "[Tech Outbound Investment Is Target of National Security Scrutiny](#)," Bloomberg Law (Aug. 14, 2023).
- Gibson, Dunn & Crutcher LLP Client Alert, "[CFIUS Annual Report for CY 2022: Top Takeaways](#)" (Aug. 9, 2023).
- Gibson, Dunn & Crutcher LLP Client Alert, "[Outbound Investment Review Swiftly Takes Shape Amid China Worries](#)" (Apr. 11, 2023).

Upcoming Related Webinars:

- [Sanctions Update EU and Germany: Current Developments and Trends](#)

Thursday, October 19, 2023

One year and a half after Russia's full-scale invasion of Ukraine, the EU and German sanctions regimes have evolved in an unprecedented fashion, posing sanctions compliance challenges for companies acting in the global space. The EU has introduced elements reminiscent of secondary sanctions, which it opposed so much in the past, while Germany has added a new sanctions enforcement authority and developed a distinct sanctions guidance. An efficient compliance management system keeping track of comprehensive export/import-related restrictions and ensuring the quality of screening results has become crucial in this environment. Hear from our experienced practitioners, who are authors of the [ICLG Sanctions Laws and Regulations Report 2024 Germany](#), about these and other developments and trends.



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EDUCATION

[Stanford University](#)

2011 Juris Doctor

[Georgetown University](#)

2001 Master of Arts

[U.S. Naval Academy](#)

2001 Bachelor of Science

Stephenie Gosnell Handler

Partner / [Washington, D.C.](#)

Stephenie Gosnell Handler is a partner in Gibson Dunn's Washington, D.C. office, where she is a member of the International Trade and Privacy, Cybersecurity, and Data Innovation practices. Ms. Handler's legal advice is deeply informed by her operational cybersecurity and in-house legal experience at McKinsey & Company, and also by her active duty service in the U.S. Marine Corps.

Ms. Handler advises clients on complex legal, regulatory, and compliance issues relating to international trade, cybersecurity, and technology matters. Ms. Handler advises global clients on U.S. regulatory compliance and derisking in a rapidly evolving geopolitical landscape. She assists clients with all aspects of CFIUS matters, including strategic frameworks and advising throughout the CFIUS process. Ms. Handler specializes in leveraging her regulatory expertise in CFIUS and trade controls as well as her operational and regulatory expertise in cybersecurity, data, and technology to provide actionable solutions to address complex issues arising at the intersection of these disciplines.

Ms. Handler returned to Gibson Dunn as a partner of the Washington, D.C. office after serving as Director of Cybersecurity Strategy and Digital Acceleration at McKinsey & Company. In this role, she led development of the firm's cybersecurity strategy and advised senior leadership on public policy and geopolitical trends relating to cybersecurity, technology, and data. She previously led McKinsey's in-house cybersecurity legal team, where she advised on diverse global cybersecurity and technology matters, including strategic legal issues, data localization, regulatory compliance, risk management, governance, preparedness, and response.

Previously, Ms. Handler was a senior associate at a leading international law firm, where she focused her practice on international trade matters including CFIUS, export controls, and sanctions, and cybersecurity matters across the cybersecurity risk management and incident lifecycle, including assessments, incident response preparedness, incident response, regulatory compliance, transactional due diligence, and regulatory enforcement actions. Ms. Handler started her legal career at Gibson Dunn, where she focused on international trade, cybersecurity, and transactional matters.

Ms. Handler earned her J.D. from Stanford University in 2011. She earned her M.A. from Georgetown University and her B.S. from the U.S. Naval Academy, both in 2001. Prior to attending law school, Ms. Handler served as an active duty officer in the U.S. Marine Corps for seven years, including deployment to Iraq.

Ms. Handler's full biography can be found [here](#).



EDUCATION

Duke University

Juris Doctor

University of International Business & Economics

Master of Laws (LL.M.)

RECOGNIZED

Corporate/M&A: Mainland China-based (International Firms)

- Chambers Greater China Region and Chambers Global

Leading Lawyer in China

- The Legal 500 Asia Pacific

China Top 15 M&A Lawyers

- Asian Legal Business

Fang Xue

Partner / Beijing

Fang Xue is the chief representative and partner in charge of the Beijing office and a partner in the Singapore office of Gibson, Dunn & Crutcher LLP. She is a member of the firm's Corporate and its Mergers and Acquisitions, Private Equity, International Trade, and National Security Practice Groups. Fang has broad-based corporate and commercial experience. She has represented Chinese and international corporations and private equity funds in cross-border acquisitions, private equity transactions, stock and asset transactions, joint ventures, going private transactions, tender offers and venture capital transactions, including many landmark deals among those. She also advises clients on corporate, compliance, export control and international trade related matters.

Fang is regularly recognized as a leading lawyer and notable practitioner by publications, such as *Chambers Asia Pacific*, *Chambers Greater China Region*, *Legal 500 Asia Pacific*, *IFLR1000*, *Best Lawyers*, *Asian Legal Business* and *China Business Law Journal*. In the *Chambers Greater China Region* guide, interviewed clients noted that "Fang provided excellent, timely and sensible advice and solutions. I especially applaud her skills in persuasion and communication, sound judgement and being able to remain calm under intense pressure," and "she is commercial and pragmatic and at the same time she is a tough negotiator. It is rare to see perfect combination of legal skills and business acumen."

Prior to moving to Beijing in 2009, she previously worked at Shearman & Sterling LLP where she spent four years in the New York office and two years in the Hong Kong office. Fang received her Juris Doctor, *magna cum laude*, from Duke University School of Law, where she served as Research Editor of the Law and Contemporary Problems and was also a member of the *Order of the Coif*. She was also the recipient of 2003 Faculty Award for Outstanding Achievement in Business Organization and Finance. She is admitted to practice in the State of New York and is qualified to practice in China. She is fluent in English and a native speaker of Mandarin.



EDUCATION

Georgetown University
Juris Doctor

Georgetown University
Master of Science

Rockhurst University
Bachelor of Arts

David A. Wolber

Of Counsel / Hong Kong

David A. Wolber is a registered foreign lawyer (New York) in Hong Kong and of counsel in the Hong Kong office of Gibson, Dunn & Crutcher. He is a member of the firm's International Trade, Global Financial Regulatory and White Collar Defense and Investigations Practice Groups.

David assists clients around the world in understanding and navigating complex legal, compliance, reputational, political and other risks arising out of the interplay of various international trade, national security and financial crime laws and regulations, with particular expertise advising clients on economic and trade sanctions, export controls, foreign direct investment controls/CFIUS, anti-money laundering ("AML") and anti-bribery and anti-corruption ("ABC") laws and regulations.

He routinely advocates on behalf of clients seeking CFIUS review, filing for trade-related licenses, responding to governmental inquiries or subpoenas, submitting self-disclosures related to potentially non-compliant activity, and dealing with formal regulatory investigations or enforcement actions.

David resumed his practice at Gibson Dunn in 2022 after taking a five-year hiatus to serve as in-house counsel to two major global financial institutions. From 2019 to 2022, he served as global financial crime counsel for HSBC, located in Hong Kong, where he advised the bank globally on compliance and risk mitigation strategies associated with various jurisdictions' sanctions, export controls, AML, ABC and national security laws and regulations, with particular focus on such issues affecting the bank in Asia. During his tenure with HSBC, David played a key role in advising and helping to guide the bank through the significant challenges posed to global financial institutions by the rising tensions in U.S.-China relations and the related proliferation of law, regulation and political action in the U.S., Hong Kong and the People's Republic of China.

From 2017 to 2019, David acted in a similar capacity at MUFG Bank, serving as sole financial crime counsel to the bank and key partner to the global financial crime compliance function headquartered in New York. Prior to becoming an attorney, he spent more than 10 years in business strategy and development roles at Big Four accounting firms and major U.S. law firms. David earned his Juris Doctor (*magna cum laude*) from Georgetown University Law Center in 2011. He received a Master of Science in Foreign Service from Georgetown University in 1997, where he focused on International Trade and Asian Political Economy, and his Bachelor of Arts from Rockhurst College in 1994. David is a member of the New York State and District of Columbia Bars.



EDUCATION

[University of Hong Kong](#)

Postgraduate Certificate in Laws

[University of Hong Kong](#)

Juris Doctor

[London School of Economics & Political Science](#)

Bachelor of Science

Arnold Pun

Associate / Hong Kong

Arnold Pun is an associate in Hong Kong. He is a member of the Litigation Practice Group.

Arnold advises international financial institutions on a wide range of complex contentious and non-contentious regulatory issues. He has advised clients on significant regulatory investigations relating to systems and controls failures, sponsor misconduct, fraud and market misconduct in Hong Kong and the wider Asia-Pacific region. Arnold also advises clients on non-contentious regulatory matters, with a particular focus on anti-money laundering and counter-financing of terrorism (AML/CFT) programs, sanctions compliance, fintech, sales and trading, and general matters relating to securities and banking laws and regulations. He also regularly advises on regulatory issues and risks arising in corporate transactions in the financial sector as well as financial services licensing applications and approvals.

Prior to joining Gibson Dunn, Arnold practiced at the Hong Kong offices of international law firms, with experience in advising on financial regulatory investigations and enforcement actions.

He earned his Juris Doctor (with First Class Honours) in 2012 from the University of Hong Kong and his undergraduate degree (with First Class Honours) in 2008 from the London School of Economics and Political Science. Arnold is admitted to practice in Hong Kong and is fluent in English and spoken Cantonese and Mandarin.

Appendix

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The Committee Consists of Nine Permanent Members

CFIUS Member Agencies



Commerce



Defense



Energy



Homeland
Security



Chair, Treasury



USTR



OSTP



State



Justice

In addition, there are 5 Observer Agencies—Council of Economic Advisors, Homeland Security Council, National Economic Council, National Security Council, and Office of Management and Budget. Other agencies may be added for specific reviews.

Types of Filings: Declarations vs. Notice

Declaration:

- Confidential filing.
- Abbreviated filing that could result in a shorter review timeline (30-day assessment).
- Largely voluntary, but there may be a mandatory filing requirement (e.g., critical technology companies, TID U.S. businesses where a foreign government is acquiring a “substantial interest”).
- In 2022, nearly 3/5 of declarations (~58%) were cleared in the declaration review period.
- CFIUS outcomes:
 - Clear during the 30-day review.
 - Request parties file full written notice.
 - Notify the parties that the Committee was unable to conclude action.

Notice:

- Confidential filing.
- “Traditional” (aka pre-FIRRMA) long-form filing, contents set forth by regulation.
- Voluntary filing, but clearance creates a legal safe harbor (e.g., CFIUS cannot take *ex post* action to unwind a transaction).
- Review timeline includes 45-day review, 45-day investigation (as needed), and 15-day presidential review (as needed).
- Parties may withdraw and abandon transaction or refile after restructuring
- In 2022, ~57% of notices proceeded to investigation phase, an uptick from recent years.
- In 2022, ~14% of notices resulted in mitigation, and ~31% were withdrawn (most of which were refiled).

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