

Webcast: CFIUS Enforcement Guidelines: First-Ever Guidance on Enforcement and Penalties in U.S. National Security Reviews of Foreign Direct Investment

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On October 20th, the Committee on Foreign Investment in the United States (CFIUS) released its first-ever guidelines to industry on enforcement and penalties for violations of the Committee's regulations designed to detect and mitigate national security risks arising from foreign investment. The enforcement guidelines (i) clarify the types of conduct that constitute a violation, (ii) discuss the Committee's procedure for imposing a penalty, and (iii) highlight aggravating and mitigating factors that will influence the Committee's penalty calculation. While the guidelines do not accompany any apparent change to CFIUS's statutory authority, they appear to be part of an effort to increase transparency of a committee long-viewed as secretive—and also may signal increased use by the Committee of its enforcement and penalty authorities. The issuance of the Guidelines is therefore noteworthy in several respects:

- Their issuance is another in a series of signals from the U.S. government of its intense focus on protecting national security interests, inclusive of U.S. technological leadership;
- The Guidelines provide a more transparent, public roadmap for how violations will be assessed and processed; and
- The Guidelines establish a voluntary self-disclosure mechanism for violations that has parallels with other agencies, though stops short of offering specific incentives for such disclosures.

Hear from our experienced national security and CFIUS practitioners about the impact of the guidelines, what they may mean in future enforcement actions, and how they fit into the Biden Administration's broader focus on using industrial and economic tools in the service of national security priorities.

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