

Treasury Department Issues CFIUS Guidelines on Enforcement and Penalties

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The U.S. Department of the Treasury, as the Chair of the Committee on Foreign Investment in the United States (CFIUS or the Committee), has issued guidelines on enforcement and penalties (Guidelines) for the first time ever. These Guidelines provide the public with information about how the Committee assesses violations of the laws and regulations concerning foreign investment in the United States. They also describe three categories of conduct that may constitute a violation, the process the Committee generally follows in imposing penalties, and some of the factors it considers in determining whether a penalty is warranted and the scope of such penalty. The Guidelines underscore the importance of prompt and complete self-disclosures of any conduct that constitutes a violation. As a reminder, the Committee's mandate is to identify and mitigate national security risks while maintaining U.S. openness to foreign investment.

Conduct That Constitutes a Violation

The Guidelines focus on three types of acts or omissions that may result in a violation:

- Failure to timely submit a mandatory declaration or notice, as applicable;
- Conduct that is prohibited by or fails to comply with CFIUS mitigation agreements, conditions or orders; and
- Material misstatements in, or omissions from, information filed with CFIUS, and false or materially incomplete certifications filed in connection with assessments, reviews, investigations or CFIUS mitigation agreements, conditions or orders, including information provided during informal consultations or in response to requests for information.

The Guidelines state that a violation will not necessarily lead to a penalty or other remedy available to the Committee under the law. Rather, the Committee will exercise its discretion in determining when a penalty is appropriate, including applicable aggravating and mitigating factors.

The Guidelines also list the Committee's sources of information on potential violations, including responses to the Committee's requests for information from parties to a transaction, voluntary self-disclosures and tips that the Committee receives through its tips line found on the Committee's website. The Committee may also use its subpoena authority provided in the Defense Production Act, as amended.

Penalty Process

The Guidelines explain the key steps in the penalty process, including the following:

- A notice of penalty issued to a party, setting forth a written explanation of the conduct to be penalized and the amount of the penalty to be imposed. The notice will state the legal basis for determining that the conduct constitutes a violation and may describe any aggravating and mitigating factors that the Committee considered.
- The party receiving a notice of penalty will have 15 business days within which to submit a petition for reconsideration, including any defense, justification, mitigating factors or explanation. The 15-day period may be extended upon a showing of good cause.
- CFIUS will consider petitions for reconsideration that are timely filed before issuing a final penalty determination. The final determination is due within 15 days of receiving the petition.

- If no petition for reconsideration is timely filed, the Committee will issue a final penalty determination in the form of a notice issued to the party or parties at issue.

Aggravating and Mitigating Factors

The Guidelines explain that, when determining an appropriate penalty in response to a violation, the Committee engages in a fact-based analysis, weighing aggravating and mitigating factors. The weight that the Committee assigns to any one factor depends on the facts and circumstances surrounding the violation. The Guidelines provide a non-exhaustive list of such factors. The list of factors includes:

- The extent to which the conduct threatened or impaired U.S. national security;
- The impact the enforcement action will have on protecting national security, ensuring that the parties at issue are held accountable, and promoting compliance with CFIUS laws and regulations;
- The extent to which the violations resulted from simple negligence, gross negligence, intentional action or willfulness;
- Efforts to conceal or delay sharing relevant information with the Committee;
- The frequency and duration of the conduct at issue;
- Whether the party or parties at issue submitted a voluntary self-disclosure;
- Whether the parties at issue cooperated completely in the investigation;
- Resources dedicated to compliance;
- Policies, training and procedures in place to prevent violations; and
- In regard to CFIUS mitigation agreements, orders and conditions, the extent to which the authority, role, access and independence of any security officer were sufficient and in line with the terms of the agreement, order or conditions at issue.

In a statement accompanying the Guidelines, the Treasury Department explained that it works closely with other CFIUS member agencies to monitor transaction parties' compliance and take any appropriate enforcement action that may be required.

The Guidelines are available [here](#). If you have any questions regarding CFIUS filing requirements or compliance issues, please contact **Brent Connor** at bconnor@vedderprice.com, **Jaime L. Rosenberg** at jrosenberg@vedderprice.com or any Vedder Price attorney with whom you have worked.

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