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FOCI and Reverse CFIUS Updates for Defense Contractors and Investors

In an earlier post, we surveyed the web of cross-border rules that govern how foreign capital flows into the U.S. defense industrial base and how U.S. capital flows out to adversary technology sectors. The post included the Committee on Foreign Investment in the United States (CFIUS), Foreign Ownership, Control, or Influence (FOCI) reviews, and the Outbound Investment Security Program (OISP), commonly called "Reverse CFIUS."

Since then, there have been updates to the FOCI and OISP programs. The Department of Defense (DoD) has proposed extending FOCI review to unclassified contracts. The Treasury Department has brought its first outbound enforcement action and proposed a significantly broader program under the Comprehensive Outbound Investment National Security (COINS) Act. Here is what has changed and what it means for contractors and investors. The Defense Federal Acquisition Regulation Supplement (DFARS) and the COINS Act regulations discussed below are proposals; the existing outbound OISP rules remain enforceable.

Proposed DFARS FOCI Requirements Beyond the Cleared Community

Historically, FOCI review focused primarily on contractors holding a facility clearance under the National Industrial Security Program. If your company held or needed a facility security clearance and a foreign party sought to own or control your company, the Defense Counterintelligence and Security Agency (DCSA) would assess whether the foreign influence can be mitigated sufficiently to protect classified information. Section 847 of the FY2020 NDAA directed DoD to look at beneficial ownership and foreign influence more broadly, and on May 7, 2026, DoD published a proposed rule (DFARS Case 2021-D011; Docket DARS-2026-0133) that

would do exactly that through a new DFARS Part 240, "Information Security and Supply Chain Security." Key features:

- FOCI and beneficial-ownership requirements would *extend to covered unclassified DoD contracts and subcontracts, at any tier, valued above $5 million*. DoD estimates more than 37,000 affected entities, roughly 57% of them small businesses. There is no blanket small business exemption.
- **Commercial Exception.** Commercial products and commercial services are generally exempt, unless a designated senior DoD official determines that a national security risk exists. That official has not yet been identified.
- Covered contractors would file Standard Form 328 (Certificate Pertaining to Foreign Interests) and beneficial-ownership information with the DCSA through the National Industrial Security System (NISS), and keep it current throughout performance.
- **Recurring Eligibility Gate.** Proposed DFARS 240.27X-4 would bar contracting officers from awarding a contract, modifying or extending a covered contract, task order, or delivery order, or exercising an option unless an exception applies or the contractor holds "eligible" status in NISS. Eligibility would become a recurring checkpoint for covered actions, not a one-time onboarding step.
- **Tight Timelines.** Changes that may place a contractor or subcontractor under FOCI must be reported to DCSA within three business days after identification or notification of the change; within 10 business days after DCSA notifies the contractor of a risk, the contractor must initiate a plan of action, provide information, and confirm compliance with the recommendations; and DCSA-recommended mitigation must be implemented within 90 calendar days of award, modification, option exercise, or identification of the risk during performance.
- The proposed clause would flow to subcontracts and other contractual instruments above $5 million, and primes would have to confirm subcontractor NISS eligibility before award and throughout performance. A subcontractor's compliance gap becomes the prime's performance risk.

The comment period closed July 6, 2026. The requirements described above remain proposed as of November 12, 2026. Contractors should not wait. Map beneficial ownership (the SF 328 includes 5% foreign-ownership reporting tests, but that

percentage is not a general safe harbor from FOCI review), confirm the applicable NISS registration process, build SF 328 representations into teaming agreements and subcontracts, and treat M&A, private equity, and recapitalization transactions as potential FOCI triggers. Assign responsibility for ownership updates and require prompt subcontractor notice of changes that could affect eligibility.

Reverse CFIUS Enforcement and Proposed COINS Act Expansion

The existing program, effective January 2, 2025, and administered by Treasury, restricts U.S. persons from making certain investments into covered foreign persons connected to China, including Hong Kong and Macau, in three sectors: semiconductors and microelectronics, quantum information technologies, and artificial intelligence.

First Enforcement Action

On October 7, 2026, Treasury announced its first OISP civil penalty, imposed in July 2026: $200,000 against Amidi, LLC, the parent of the organization doing business as Plug and Play Tech Center. Amidi's controlled foreign entity (i.e., Amidi's Chinese subsidiary), a Chinese fund, invested approximately $92,478 in April 2025 in Shanghai Qiongche Intelligent Technology (Noematrix), a developer of artificial intelligence (AI), robotics, and embodied intelligence. Under 31 C.F.R. § 850.402, a U.S. person must notify Treasury of a controlled foreign entity's transaction that would be notifiable if undertaken by a U.S. person. The investment was notifiable, and no notification was filed by Amidi, the U.S. parent. Treasury found the transaction through its own market monitoring.

Three lessons stand out. The penalty was more than double the investment, so even small checks carry real exposure. The violation ran through a controlled foreign entity, and the rules place the notification duty for a controlled foreign entity's deal directly on the U.S. parent. Amidi was penalized for its own failure to file, even though its Chinese fund made the investment. And most important, Treasury is actively watching the market rather than waiting for filings.

Proposed COINS Act Regulations

On October 22, 2026, Treasury announced a Notice of Proposed Rulemaking, published in the Federal Register on October 26, 2026, to implement the COINS Act, enacted in the FY2026 NDAA. The proposal would create a new 31 C.F.R. Part 851; the existing Part 850 remains in force until the final rule takes effect. Highlights:

- **Expanded Sectors.** Semiconductors and microelectronics, quantum, and AI remain covered, joined by high-performance computing and supercomputing (including AI data center clusters), hypersonic systems, and biotechnology.
- **AI Becomes "Super Intelligence."** AI is recast as "SI," defined broadly enough to capture content-generating systems, agentic tools, robotics, and autonomous and unmanned systems. Covered investment in development of an SI system would be prohibited, subject to applicable exceptions, eliminating the notification tier for AI. Biotechnology would likewise be prohibited-only.
- **Prohibited vs. Notifiable.** Transactions remain split into prohibited (high-risk) and notifiable categories. A notifiable deal becomes prohibited if the target or its affiliate appears on specified lists, now including the Section 1260H Chinese Military Companies list and the forthcoming BIOSECURE list. Notifications would require more detail, including foreign beneficial owners above 5%, transaction documents, and commercial rationale; the 30-day post-closing deadline remains.
- **More Countries of Concern.** Beyond China (including Hong Kong and Macau), the proposal adds Cuba, Iran, North Korea, Russia, and Venezuela under the Nicolás Maduro regime. Treasury states that this regime no longer exists; the current Venezuelan government is outside that regime-specific designation.
- **Thresholds and Exceptions.** A new $50,000 de minimis exception, aggregated over 12 months, would apply to notifiable transactions only. The LP exception for commitments of $2 million or less would be aggregated across fund and co-investment vehicles, and the business development company exception would not carry forward.
- **Fund Managers.**S. persons who knowingly direct non-U.S. persons into covered deals – including investment committee members of non-U.S. funds – would face coverage extending to notifiable transactions, as well as prohibited transactions.

- Civil penalties would track the International Emergency Economic Powers Act (IEEPA) ceiling (the greater of the inflation-adjusted statutory amount or twice the transaction value), Treasury would have express divestment authority for covered transactions in prohibited technology, and voluntary self-disclosures would need to include a remediation plan.

Public comments close December 7, 2026, and the COINS Act requires a final rule by March 13, 2027.

Takeaways

The two regimes are converging on the same question: who owns, funds, and controls companies working in sensitive technology. Under the proposed DFARS rule, foreign capital in a defense supplier's cap table can stall awards and option exercises. Under the existing OISP, a U.S. fund's offshore subsidiary writing a five-figure check into a Chinese robotics startup can draw a six-figure penalty. Defense companies and their investors should review ownership structures, fund documents, and subcontract terms now, and consider submitting comments on the Treasury proposal before the December 7 deadline. Before committing capital, document the target's ownership and technology activities, identify the responsible U.S. filer, and calendar any notification deadline. Build that review into foreign subsidiary and fund investment approvals.

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