

GIBSON DUNN



International Trade Advisory & Enforcement Update

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CFIUS's Known Investor Program Begins to Take Shape

CFIUS announces a preliminary framework for its long-awaited Known Investor Program and seeks public comments on the proposed structure, implementation, and eligibility requirements.

On February 6, 2026, the Committee on Foreign Investment in the United States (CFIUS or the Committee) issued a [request for information](#) (RFI) concerning its implementation of the long-awaited Known Investor Program (KIP).

As discussed in our previous [client alert](#) and recent [Year-End Update](#), the idea of the KIP started to gain traction after President Trump's [America First Investment Policy](#), which directed CFIUS to develop rules for an "expedited 'fast-track' process, based on 'objective standards,' to facilitate greater investment from specified allied and partner sources in United States businesses involved with United States advanced technology and other important areas."^[1] In May 2025, CFIUS formally [announced](#) that the KIP was in development, and in January 2026, issued a set of [frequently asked questions \(FAQs\)](#) about the process. While the FAQs did not provide many specifics about the structure of the KIP, they indicated that the KIP would function as an abridged CFIUS review process, would be geared toward repeat CFIUS filers, and that a pilot program was conducted during the second half of 2025 with a select number of participants based on objective considerations, including "geographic diversity as well as frequency of filing with CFIUS in recent years."^[2]

The recent RFI underscores that the KIP is primarily designed to streamline the CFIUS review process, particularly for frequent filers whose transactions often pose minimal national security risk in the eyes of the Committee. To expedite review of certain lower risk transactions, the RFI outlines a process by which foreign investors can apply for Known Investor Entity (KIE) status by providing the Committee with information about their structure and investment activities through a standardized questionnaire. Interestingly, the RFI also provides key insight into the current work of the Committee, noting that “more than 90 percent of covered transactions reviewed by CFIUS over the past five years have been approved,” with approximately 70 percent of transactions being approved in the initial review phase (i.e., within the first 30- or 45-day review period, depending upon whether the filing was made as a declaration or notice).^[3]

The RFI provides a broad overview of the proposed structure of the KIP and specifically requests feedback from the public on the program through [Regulations.gov](https://www.regulations.gov). Public comments are requested on or before March 18, 2026.

I. KEY TAKEAWAYS

The KIP, as proposed, represents a significant change compared to traditional CFIUS reviews—which analyze national security risks relating to a specific transaction—but its eligibility criteria remain strict. Below, we offer a few preliminary takeaways from the proposed structure:

- **The benefits may be limited to the most active CFIUS filers.** Given the strict eligibility requirements and level of information that must be provided to CFIUS, the benefit of becoming a KIE may be limited to those foreign investors that file with the Committee multiple times in any given year and that are located in countries the Committee perceives as posing low risk to U.S. national security. For frequent filers with well-documented processes who meet the eligibility criteria and operate primarily in countries with low risk, this program could prove to be quite valuable in expediting the CFIUS review process, though the exact benefits of KIE status remain uncertain.
- **The information and documentation required for KIE eligibility are extensive—and go beyond that required in a typical filing review.** While standard CFIUS reviews focus on the national security concerns presented by a specific transaction, KIE eligibility requires an extensive review of the foreign investor’s structure and affiliated investment vehicles, parent entities, past investment structure, historic and planned investments (including outside of the United States), connections to certain Adversary Countries (as defined below), contracts with and other connections to the U.S. government, and past instances of regulatory non-compliance, among others. Apart from potential business concerns with providing such extensive information, foreign investors may also face administrative difficulty in locating the required historic information in order to provide sufficient responses to the requests as currently formulated.
- **Certain business connections to China, other “Adversary Countries,” and/or restricted parties will be difficult to overcome.** The Committee makes clear that it will heavily scrutinize connections to so-called “Adversary Countries” and a broad array of restricted parties under U.S. law, which in most cases will preclude the foreign investor from participating in the KIP. As proposed, the term “Adversary Countries” would include those countries identified in the [America First Investment Policy](#) and any subsequent updates, namely: China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia, and the “regime of Venezuelan politician Nicolás Maduro” (though it remains

unclear if the latter regime still exists for purposes of the KIP).^[4] In particular, many foreign investors may find that connections to Chinese investors, Chinese supply chains, and investments in China by related entities that are otherwise permissible under U.S. law may nevertheless render the foreign investor ineligible for KIE status.

- **For foreign investors with complex structures and multinational portfolios, providing sufficient information to obtain KIE status may present additional challenges.** As noted above, the extensive required disclosure of business operations, partnership relationships, and financial information goes well beyond traditional transaction-based review. Disclosure of required elements may be particularly challenging for investors with complex organizational structures. We also note that some investors may encounter difficulty under non-U.S. banking laws or historic contractual provisions in providing sufficient information related to non-U.S. investment structures.

II. PROPOSED KIP FRAMEWORK

Informed by the pilot program conducted during the second half of 2025, the proposed questionnaire will contain a section designed to determine KIE eligibility, as well as extensive questions about the ownership, operation, activities, and management of the proposed KIE, among others.

A. CFIUS Sets a High Bar for KIP Eligibility

As proposed, the KIP would be open only to foreign investors who complete the questionnaire—including for entities under their common ownership or “control” (as currently defined in the CFIUS regulations)^[5] for which information is provided—provided each entity meets the eligibility criteria. As a threshold eligibility matter, the foreign investor must meet the following filing frequency thresholds:

- **Recent History of Past Filings:** The foreign investor (including its subsidiaries) must have submitted at least three distinct “covered transaction”^[6] or “covered real estate transaction”^[7] (as defined in the CFIUS regulations) filings to CFIUS within the past three years and received notification that CFIUS concluded all action or was unable to conclude action in the case of a declaration for at least one of the three transactions.
- **Expected Filing Activity:** The foreign investor (including its subsidiaries) must also expect to submit at least one transaction that meets the definition of a “covered transaction” or “covered real estate transaction” to CFIUS within the following 12 months.

Even if the filing frequency thresholds are met, foreign investors are ineligible to participate in the KIP if they have a history of non-compliance or associations with certain restricted parties or Adversary Countries as follows:

- **Past Instances of CFIUS Non-Compliance:** The foreign investor must not have received a written notice from CFIUS that it (i) submitted a material misstatement or omission in a past notice or declaration to CFIUS, (ii) made a false certification to CFIUS, or (iii) violated the terms of a mitigation agreement in the past five years. Importantly, this restriction does not appear limited to cases where a penalty was assessed and would include so-called Determination of Noncompliance Transmittal (DONT) letters.

- **Associations with Restricted Parties:** The foreign investor cannot be identified on any of the following lists:
 - the Entity List and Military End User List maintained by the U.S. Department of Commerce;
 - the Specially Designated Nationals and Blocked Persons (SDN) List, Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) List, and the Sectoral Sanctions Identification (SSI) List maintained by the U.S. Department of the Treasury; and
 - the Chinese Military Companies (Section 1260H) List maintained by the U.S. Department of Defense.

Additionally, no entity or individual on any of the above lists can, directly or indirectly, (1) hold a 10 percent or greater interest in or (2) otherwise hold the right to appoint a member of the board of directors (or equivalent) of the foreign investor. In particular, the inclusion of the NS-CMIC and Section 1260H Lists is notable given that these lists do not typically carry the same restrictive weight as the other lists and directly target Chinese entities.

- **Connections to Adversary Countries:** The foreign investor cannot maintain certain connections with Adversary Countries, including:
 - Neither the foreign investor's headquarters nor its principal place of business can be in an Adversary Country;
 - No government of an Adversary Country (including its instrumentalities) can, directly or indirectly, (1) hold a 10 percent or greater interest in or (2) otherwise hold the right to appoint a member of the board of directors (or equivalent) of the foreign investor;
 - No entity with its headquarters or principal place of business in an Adversary Country can hold greater than a 25 percent interest in the foreign investor;
 - No national of an Adversary Country can hold greater than a 25 percent interest in the foreign investor;
 - No board members or equivalent (including external directors or similar individuals) or officers of the foreign investor may be principally located in, or a national of, an Adversary Country;
 - More than 50 percent of the foreign investor's employees cannot be located in one or more Adversary Countries; and
 - If applicable, all of the foreign investor's manufacturing facilities and/or research and development facilities cannot be located in one or more Adversary Countries.
- **Concerning Supply Chains:** The foreign investor cannot knowingly use components, equipment, or infrastructure—or incorporate such items into its products or services provided to third parties—that are sourced from entities or individuals on the Entity List, Military End User List, or 1260H List.

B. Information and Document Requests Extend Well Beyond Traditional CFIUS Review

If a foreign investor can overcome the eligibility thresholds outlined above, the KIP requires the prospective KIE to respond to extensive document and information requests, including the following:

KIE Eligibility Factors	Examples of Information/Documentation Required
<i>Legal and Organizational Factors.</i> Information concerning the governance structure of the prospective KIE.	<ul style="list-style-type: none">• Ownership information for any individuals or entities with greater than 5 percent interest in the foreign investor;• All funds used by the foreign investor to make investments in U.S. businesses in the past 5 years or anticipated to be used in the upcoming year;• Governance documents for the foreign investor and its parent(s);• Information on non-passive shareholders (including past participation in shareholder meetings);• Thresholds for quorum and decision-making of the foreign investor and its parent(s); and• Any significant relationships with foreign governments, among others.
<i>Personnel and Process for Governing and Operating.</i> Information on how the prospective KIE is managed and operated.	<ul style="list-style-type: none">• Biographical and personal information on directors, officers, and any individuals who have 5 percent or greater ownership interest in the foreign investor or its parent(s);• Explanation of committees and personnel that contribute to the investment decision-making process;• Information on how the foreign investor decides who will represent its interests on the board of its funds, operating companies, and/or portfolio countries;• Description and related documentation of how the foreign investor identifies investment transactions and evaluates compliance or reputational risk; and• Information on the foreign investor's frequent co-investment partners, among others.
<i>Nature and Characteristics of the KIE's Business.</i> Information on the prospective KIE's	<ul style="list-style-type: none">• Annual reports for the foreign investor and its parent(s);• Detailed financial information, including primary revenue-generating businesses and information on credit providers and debtholders;

lines of business and corporate strategy.	<ul style="list-style-type: none"> • Certain investment strategy documents and governance provisions; • Standard consent and veto rights held by the foreign investor in U.S. portfolio companies and the frequency with which such rights have been exercised or withheld in the past five years; • Information on the managerial oversight the foreign investor exerts over its subsidiaries and portfolio companies; • Governance and decision-making arrangements related to access to data, proprietary information, intellectual property, personal information, and systems and infrastructure of the foreign investor's subsidiaries and portfolio companies; and • Security and compliance information, including policies, practices, trainings, and controls regarding risk management, cybersecurity, data privacy and security, intellectual property protection, physical security, and supply chain integrity, among others.
<p>Engagement with the U.S. Government and Compliance Posture. Information on the prospective KIE's interactions with the U.S. government and activities in non-U.S. jurisdictions.</p>	<ul style="list-style-type: none"> • Descriptions of any products or services the foreign investor provides, directly or indirectly, to U.S. government entities and related documentation; • Information on previous CFIUS filings and mitigation agreements; • Description of any incremental acquisition made after CFIUS cleared a covered transaction; • Compliance history with certain U.S. government agencies, seemingly including instances of alleged non-compliance even when no penalties were assessed; • Whether any proposed investment by the foreign investor was prohibited or mitigated by a foreign investment authority in the past 5 years; • Any remedial action taken as part of a settlement, criminal, or civil enforcement action in a non-U.S. jurisdiction since 2020; and • Description of the foreign investors process for multi-jurisdictional filings and approval, among others.
<p>Verifiable Distance from Adversary Countries. Information on the prospective KIE's</p>	<ul style="list-style-type: none"> • Information on investment partners located in Adversary Countries; • Investments in or other ties to Adversary Country governments;

connection to any Adversary Country.	<ul style="list-style-type: none"> • Investment strategies and targets involving Adversary Countries; • Planned investments in the next 24 months and expected growth pipeline over the next 5 years; and • Operational connections to Adversary Countries, such as primary business lines located in and information on hardware or software sourced from Adversary Countries.
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The level of detail required by such requests extends well beyond information typically supplied during the course of a typical CFIUS review and is likely to pose significant hurdles to investors with complex structures across multiple jurisdictions. Additionally, the prospective KIE would be required to certify the completeness and accuracy of its questionnaire responses, though such information would be subject to the same confidentiality protections typically applied to CFIUS submissions.

C. CFIUS Is Actively Seeking Public Comments on the KIP

The RFI included 45 broad questions seeking feedback and suggestions related to proposed KIP structure, additional factors to consider in evaluating all aspects of the KIP, and what challenges may arise from providing this information. Many of the questions are focused on identifying difficulties that may result from collecting the extensive information requested, including one specifically asking which types of information collected under the program would take the most time and effort to provide, indicating that CFIUS acknowledges the extensive nature of the materials required for enrollment. Other KIP-focused questions relate to the proposed definitions, identification of KIEs, eligibility criteria, information requests (as discussed above), and other instances where additional information or clarity may be needed.

D. CFIUS Wants Input More Broadly as Well

CFIUS appears to be focused not just on standing up the KIP structure, but also is soliciting feedback about the CFIUS process more generally. The areas of focus include:

- **General Processes:** The Committee is seeking a variety of feedback regarding its review processes, ranging from specific questions pertaining to discrete items, such as pre-notice consultations and technical changes to CFIUS authorities, to broad commentary and suggestions on how to streamline the review process. CFIUS also appears to be aiming to increase public information sharing and enhance transaction parties' overall experience during the review process, as well as attempting to gain insight into transaction parties' considerations when undergoing filing review. Interestingly, the Committee is considering methods for calibrating its processes based on industry sector, investor or investment type, and other transaction-specific characteristics.
- **Mitigation:** Consistent with the current administration's goal of making CFIUS mitigation less onerous, as outlined by the America First Investment Policy, the Committee is seeking commentary on the substantive and procedural aspects of mitigation agreements. Examples of requested feedback include general information regarding transaction parties' practices when negotiating mitigation agreements, financial and

operational considerations informing the negotiation of specific mitigation terms, and process improvements for voluntarily abandoned transactions.

- **Lessons Learned:** CFIUS is soliciting efficiency-focused insights discovered from interactions with other regulatory regimes, both domestic and foreign. If parties submit favorable suggestions about methods employed by other governmental authorities to conduct their review process in a more streamlined way, the Committee may be poised to adopt such practices.

These questions align with the current administration's focus on reevaluating and revising the inner workings of the Committee to increase efficiency and promote foreign investment that does not pose national security concerns.

Following its review of the public comments received, CFIUS is likely to engage in at least one more round of public rulemaking before finalizing the regulations to implement the KIP, though interested parties should consider engaging early in the review process and submit any comments ahead of the March 18, 2026 public comment deadline.

[1] The White House, America First Investment Policy § 2(c) (Feb. 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy>.

[2] CFIUS, CFIUS Known Investor Frequently Asked Questions 3 (Jan. 2026), [here](#).

[3] Request for Information Pertaining to the CFIUS Known Investor Program and Streamlining the Foreign Investment Review Process, 91 Fed. Reg. 5,694, 5,695 (Feb. 9, 2026), [here](#).

[4] The White House, America First Investment Policy § 4 (Feb. 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy>.

[5] See 31 C.F.R. § 800.208.

[6] See *id.* § 800.213.

[7] See *id.* § 802.212.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the

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