GUNDERSON DETTMER

Client Insight: U.S. Outbound Investment Rules Under the COINS Act to be Expanded by Treasury Proposal

Insights
November 6, 2026

The U.S. Department of the Treasury has proposed rules that would significantly expand the outbound investment program that has restricted U.S. investment in PRC-related technology companies since January 2025. The proposal would: (i) prohibit covered investments in any company developing AI, (ii) add biotechnology, hypersonics and high-performance computing as covered sectors, and (iii) extend the program to Russia, Iran, North Korea, Cuba and Venezuela. Here is a detailed look at the proposed rules, their potential impact on venture-backed and other privately held companies ("Companies"), U.S. venture capital funds, corporate venture capital, private equity funds, limited partners and other investors, and the steps Companies, funds and their general counsel should take now.

On October 22, 2026, the U.S. Department of the Treasury ("***Treasury***") issued a Notice of Proposed Rulemaking (the "***Proposed Rules***") [Fn 1] to implement the Comprehensive Outbound Investment National Security Act of 2025 (the "***COINS Act***"). [Fn 2] The COINS Act was enacted on December 18, 2025, as part of the Fiscal Year 2026 National Defense Authorization Act and codified Treasury's existing Outbound Investment Security Program (the "***OISP***" or the "***Program***") as Title VIII of the Defense Production Act. [Fn 1]

© 2026 Gunderson Dettmer; all rights reserved.

As discussed in our prior client alerts, [Fn 3] [Fn 4] the Program currently prohibits, or requires post-closing notification of, certain investments by U.S. persons in PRC-related companies engaged in semiconductors and microelectronics, quantum information technologies and artificial intelligence, under rules codified at 31 C.F.R. Part 850 (the "***Current Rules***"). [Fn 5] The Proposed Rules keep the basic structure of the Current Rules but would significantly expand both the countries and the technologies covered. They would be issued as a new, standalone 31 C.F.R. Part 851. [Fn 1]

The Proposed Rules are not yet in effect. Treasury is accepting public comments until **December 7, 2026**, after which it will issue final rules that set the effective date. Until then, the Current Rules remain in force, and Treasury has made clear that it will continue to enforce them. [Fn 1] [Fn 6]

Key Takeaways:

- **The Proposed Rules are Not Yet Effective, and the Current Rules Remain in Force.** Transactions completed between January 2, 2025 and the effective date of the final rules remain subject to the Current Rules. The Proposed Rules would not apply retroactively. [Fn 1]
- **All Covered Investments in AI Development Would be Prohibited.** Treasury would rename AI as "super intelligence" ("SI") and eliminate the compute thresholds and end-use tests of the Current Rules. Any covered investment in a covered foreign person that develops an SI system, including agentic products built on third-party models, would be prohibited outright rather than merely notifiable. [Fn 1]
- **Biotechnology Would be Added as a Prohibited-Only Sector.** Covered investments in companies that use biological systems to produce pharmaceutical compounds (including small molecules, biologics, and cell and gene therapies), as well as sequencing, bioinformatics, biomanufacturing and lab automation companies, would be prohibited, with no notification alternative. [Fn 1]
- **Five Additional Countries of Concern.** Cuba, Iran, North Korea, Russia and Venezuela under the Maduro regime would join the PRC (including Hong Kong and Macau), although Treasury takes the position that Venezuela does not currently meet the definition. [Fn 1]
- **A U.S. Company May Itself be a "Covered Foreign Person."** Under a broader principal place of business test, a U.S.-incorporated and U.S.-headquartered

© 2026 Gunderson Dettmer; all rights reserved.

Company whose CEO resides in, and primarily manages the business from, a country of concern would have a principal place of business in that country. [Fn 1] This is in addition to current rules that can deem a U.S. company covered based on 50% or more ownership by persons of, or 50% or more certain economics from a subsidiary in, a country of concern.

- **Offshore Holding Company Structures Would Require Careful Review.** A Cayman Islands or British Virgin Islands holding company with a PRC subsidiary, such as a wholly foreign-owned enterprise, could itself be a covered foreign person, and U.S. officers or directors who approve its transactions could be treated as engaging in them. [Fn 1]
- **No Grandfathering of Follow-On Investments.** Follow-on investments and certain conversions of SAFEs, convertible notes and other contingent interests made after the effective date would be tested under the new rules. [Fn 1]
- **LPs Should Continue to Require Contractual Assurances from Funds.** The $2 million LP exception and the binding contractual assurance exception carry over, but Treasury has signaled that investing in a fund with *existing* covered positions may itself be a covered transaction. [Fn 1]
- **LP Grandfathering Rules**. As was the case when the Current Rules were first proposed, grandfathering rules apply to investors who have made binding capital commitments to an investment fund prior to the effective date of the Proposed Rules. Investors can continue to satisfy those commitments without being subject to the Proposed Rules. Such commitments, however, would remain subject to the provisions of the Current Rules, even after the effective date of the Proposed Rules. [Fn 1] [Fn 5]
- **Treasury Has Begun Enforcing the Program.** In October 2026, Treasury announced its first civil penalty: $200,000 for a missed notification on an investment of approximately $92,478 made by a U.S. investor's controlled Chinese fund. [Fn 6]

What is the Outbound Investment Security Program?

The Program originated with Executive Order 14105, issued August 9, 2023, which directed Treasury to establish a targeted national security program regulating U.S.

© 2026 Gunderson Dettmer; all rights reserved.

outbound investment in certain technologies in “countries of concern.” Treasury issued final rules on October 28, 2024, effective January 2, 2025. [Fn 4] [Fn 5] As we described at the time, the Program is principally focused on denying covered companies the intangible benefits that often accompany U.S. investment, such as managerial assistance, investment and talent networks, market access and enhanced access to additional financing. [Fn 4]

Under the Current Rules, U.S. persons must determine for themselves whether a transaction is prohibited, notifiable or outside the scope of the rules. To the relief of many, there is no “reverse CFIUS” filing and approval process. [Fn 4] Notifiable transactions must be reported to Treasury within 30 days after closing, and prohibited transactions may not be undertaken. U.S. persons must also notify Treasury of notifiable transactions by their controlled foreign entities and take all reasonable steps to prevent prohibited transactions by those entities. [Fn 6]

What is the COINS Act?

“COINS” stands for the Comprehensive Outbound Investment National Security Act of 2025. The legislation was previously introduced in the Senate as the Foreign Investment Guardrails to Help Thwart China Act (the “FIGHT China Act”) and was ultimately enacted, in revised form, as part of the Fiscal Year 2026 National Defense Authorization Act (the “***NDAA***”). [Fn 8] The COINS Act appears in Title LXXXV of the NDAA. Subtitle C, which contains the outbound investment provisions, adds a new Title VIII to the Defense Production Act of 1950 (50 U.S.C. §§ 4581–4589). [Fn 1] [Fn 9]

Relationship to Executive Order 14105. Before the COINS Act, the Program rested on presidential authority: the Current Rules were issued under Executive Order 14105 and the International Emergency Economic Powers Act (“***IEEPA***”), and could therefore be modified or withdrawn by executive action. [Fn 1] The COINS Act gives the Program an independent statutory basis. It codifies the core framework established under the executive order and implemented in the Current Rules, including the two-tier system of prohibited and notifiable transactions, while also establishing new requirements and authorities of its own. [Fn 9] [Fn 10] Codification is not wholesale, however. The COINS Act uses its own terminology and definitions, which the Proposed Rules implement in a new 31 C.F.R. Part 851, and it does not itself revoke Executive Order 14105. The Current Rules issued under the executive order continue to apply to transactions occurring from January 2, 2025 until the effective date of the final rules. [Fn 1] [Fn 9] Unlike the executive order, the Title VIII

© 2026 Gunderson Dettmer; all rights reserved.

provisions are scheduled to sunset after seven years unless Congress reauthorizes them. [Fn 9]

What the COINS Act Changes. The COINS Act expands the list of countries of concern, mandates coverage of hypersonic systems and high-performance computing, and authorizes Treasury to designate additional technologies. Treasury used that authority to propose adding biotechnology and expanding AI/SI coverage. [Fn 1] [Fn 2] The COINS Act also requires a *de minimis* exception, a process for requesting non-binding Treasury feedback, and a mechanism for the public to submit information about covered foreign persons, and it authorizes Treasury to establish a public, non-exhaustive database of covered foreign persons. It directs Treasury to issue implementing regulations within 450 days of enactment, or by approximately March 2027. [Fn 1]

Which Investors are Covered by the Proposed Rules?

As under the Current Rules, the Proposed Rules apply to "U.S. persons," wherever located. A U.S. person includes any U.S. citizen, lawful permanent resident, entity organized under the laws of the U.S. or any jurisdiction within the U.S. (including any foreign branch of such an entity), and any person in the U.S. [Fn 1] U.S. persons remain responsible for transactions by their "controlled foreign entities." A fund's general partner, managing member or investment adviser is treated as a "parent" of the fund for this purpose. [Fn 1] Treasury is also considering expanding the definition of "parent" to reach certain sub-advisers to non-U.S. funds and general managers of non-U.S. entities, and has asked for comment. [Fn 1]

Which Companies are Covered by the Proposed Rules?

The Proposed Rules would restructure the definition of "covered foreign person." Covered foreign person status would turn solely on a party's relationship to a country of concern, and the technology analysis would move into the definitions of prohibited and notifiable transactions. [Fn 1] Because the term changes meaning, ***representations, covenants and side letter provisions keyed to the Current Rules' definition of "covered foreign person" should be revisited.*** The Proposed Rules would also expand who is covered:

© 2026 Gunderson Dettmer; all rights reserved.

- **New Countries of Concern.** Cuba, Iran, North Korea, Russia and Venezuela under the Maduro regime would be added to the PRC (including Hong Kong and Macau). Treasury states that the Maduro regime no longer exists and Venezuela therefore does not currently meet the definition, but it cautions investors to carefully evaluate Venezuela-related transactions. [Fn 1]
- **Principal Place of Business.** An entity could have more than one principal place of business, including where it is headquartered and where it conducts its main business activities. Treasury's example is a Company incorporated and headquartered in the U.S. whose CEO resides in, and primarily manages the business from, a country of concern. [Fn 1]
- **Political Leadership and Control.** Members of the Central Committee of the Chinese Communist Party and other political leadership of a country of concern, and entities they own or control, would be covered. The "direction or control" test would also reach entities directed or controlled by covered individuals or entities, not only by governments. [Fn 1]
- **Restricted Party Lists and Affiliates.** An otherwise notifiable transaction would become prohibited if the covered foreign person, or any of its affiliates or subsidiaries, appears on certain U.S. government lists. Two lists would be added: the Department of War's Section 1260H list of Chinese military companies (which includes, for example, Alibaba and Tencent) and the Office of Management and Budget's list of biotechnology companies of concern under the BIOSECURE Act. [Fn 1]

Which Technologies are Covered by the Proposed Rules?

The Proposed Rules would cover six sectors, three of them new. The table below summarizes the prohibited and notifiable categories. [Fn 1]

Technology Category	Prohibited	Allowed Subject Closing Notice
Semiconductors and Microelectronics	Activities already prohibited under the Current Rules (e.g., EDA software, semiconductor fabrication equipment, certain advanced integrated circuits), **plus**:	Design, fabricatic packaging of inte circuits not includ prohibited categc

© 2026 Gunderson Dettmer; all rights reserved.

Technology Category	Prohibited	Allowed Subject Closing Notice
	1. high-bandwidth memory; 2. radiation-hardened integrated circuits; 3. photonic integrated circuits; and 4. additional categories of advanced integrated circuits.	
Quantum Information Technologies	Activities already prohibited under the Current Rules, **plus** development of software for quantum computers and of quantum algorithms and applications (subject to an end-use limitation).	None.
Super Intelligence (formerly Artificial Intelligence)	Development of **any** SI system, regardless of training compute or end use, expressly including generative systems, SI agent harnesses and embodied SI systems (e.g., robots, autonomous vehicles and unmanned systems).	None. The notific AI would be elimi
High-Performance Computing and Supercomputing (new)	Certain advanced supercomputers (carried over from the Current Rules).	High-bandwidth, interconnects.
Hypersonic Systems (new)	Development or production of: 1. hypersonic vehicles and weapon delivery systems capable of sustained flight at Mach 5 or greater; 2. hypersonic propulsion systems and fuels; 3. certain specialized materials;	Certain sensors, navigation and c equipment, softw other dual-use m

© 2026 Gunderson Dettmer; all rights reserved.

Technology Category	Prohibited	Allowed Subject Closing Notice
	4. testing facilities; and 5. related digital twin and digital thread technologies.	
Biotechnology (new)	Use of biological systems to modify, enhance, produce or control certain agents and toxins, energetic materials, novel functional materials, **pharmaceutical compounds** (including small molecules, vaccines, cell and gene therapies, and monoclonal antibodies) and biofuels; and development or production of brain-computer interfaces, biomanufacturing equipment, biological sequencing technology, certain laboratory instruments, bioinformatics tools and laboratory automation.	None. Biotechnol a prohibited-only

The breadth of the SI and biotechnology categories deserves particular attention. An SI system is defined broadly to include any machine-based system that generates content or makes predictions, recommendations or decisions, along with any tool or application that operates using one. A Company that enhances or extends a third-party model, for example through an agentic harness, would be treated as developing an SI system. Use of an off-the-shelf model strictly for internal, non-commercial purposes would not, by itself, constitute development. [Fn 1] Treasury has acknowledged that the biotechnology restrictions could have countervailing effects on public health and U.S. businesses and has specifically requested comment on how to scope the sector more precisely. [Fn 1]

What Types of Transactions are Covered by the Proposed Rules?

© 2026 Gunderson Dettmer; all rights reserved.

The covered transaction types, now called “covered national security transactions,” are largely unchanged. They include acquisitions of equity or contingent equity (e.g., preferred stock, SAFEs and convertible notes); loans with equity-like rights such as profit interests or board appointment rights; conversions of contingent interests; greenfield and brownfield investments; joint ventures; knowingly directing a foreign person’s covered transaction; and acquisitions of LP interests in certain non-U.S. funds. [Fn 1] As with CFIUS, there is no minimum percentage or dollar threshold for a covered transaction, other than the new *de minimis* exception described below.

Most exceptions under the Current Rules would carry over, including those for publicly traded securities, registered investment company securities, certain LP interests, derivatives, full buyouts of covered foreign person interests, employment compensation, certain syndicated debt financings and binding, uncalled capital commitments. [Fn 1] The Proposed Rules would also:

- add a ***de minimis* exception** for transactions not exceeding $50,000 in the aggregate over the preceding 12 months. This exception applies only to the notification requirement, ***not*** to prohibited transactions; [Fn 1]
- add a **financial services exception** covering bank lending, payment processing, underwriting, credit rating, prime brokerage, global custody and equity research; [Fn 1]
- narrow the **intracompany transfer** exception to funding that supports a controlled foreign entity’s operations outside covered technologies, or that *maintains* covered operations existing before the effective date; [Fn 1] and
- eliminate the exception for investments in **business development companies**, although Treasury has requested comment on whether to retain it. [Fn 1]

Importantly, the exceptions for securities, LP interests and derivatives would not apply where the U.S. person obtains governance rights beyond “standard minority shareholder protections.” That list is short. It covers vetoes over a sale of substantially all assets, bankruptcy or liquidation, related-party contracts and guarantees, and changes to the investor’s class rights, plus pro rata purchase rights. [Fn 1] ***Board seats and the broader protective provisions customary in venture financings may go beyond these protections.***

Finally, pure fee-for-service, sponsored research and licensing arrangements that involve no equity, contingent equity, equity-like debt or joint venture would generally fall outside the covered transaction types. Treasury will look past form, however, to

© 2026 Gunderson Dettmer; all rights reserved.

arrangements that function like a joint venture, meaning contributions of capital or assets and a sharing of profits and losses. [Fn 1]

How do the Proposed Rules Affect Fund Investors?

Exception for Certain Limited Partner Investments

As under the Current Rules, an LP investment in a non-U.S. venture capital fund, private equity fund, fund of funds or other pooled investment fund would be excepted where either (a) the LP's committed capital is not more than $2 million, aggregated across the fund's investment and co-investment vehicles; or (b) the LP has secured a binding contractual assurance that its capital will not be used to engage in a transaction that would be prohibited or notifiable if engaged in by a U.S. person. [Fn 1] This exception is for LPs and does not extend to the fund itself. Capital contributions pursuant to a binding, uncalled capital commitment entered into before the effective date would be excepted, although such contributions will remain subject to the Current Rules.

Investments in Funds with Existing Covered Positions

The Proposed Rules continue to provide that an LP does not acquire an indirect interest in a covered foreign person merely because the fund invests after the LP acquires its interest. In the preamble, however, Treasury states that U.S. person investments in pooled funds with ***pre-existing*** investments in a covered foreign person may constitute an indirect covered transaction. [Fn 1] The Proposed Rules do not include regulatory text explaining when this would apply. LPs making new fund commitments, and buyers of secondary interests, should diligence existing portfolio positions.

Prohibitions on Avoidance Relevant to U.S. Persons Managing Non-U.S. Funds

A U.S. person who has authority to make or substantially participate in decisions on behalf of a foreign entity (for example, as an officer, director or investment committee member) and who exercises that authority to direct, order, decide upon or approve a covered transaction would be treated as engaging in that transaction. The COINS Act extends this concept to notifiable, as well as prohibited, transactions, meaning that the U.S. person would be required to file a notice of their participation in the transaction with the Treasury Department, even if investing fund itself was not subject to such notice requirement. [Fn 1] U.S. persons who recuse themselves from approval and decision-making, from reviewing, editing, commenting on, approving

© 2026 Gunderson Dettmer; all rights reserved.

and signing transaction documents, and from negotiating with the counterparty would not be considered to have directed the transaction. [Fn 1]

How do the Proposed Rules Apply to Offshore Holding Company Structures?

Many biotechnology companies, and some companies in other covered sectors, are organized with a Cayman Islands or British Virgin Islands holding company (an "Offshore Topco") that conducts research, development or manufacturing in the PRC through a wholly foreign-owned enterprise ("WFOE"). Joint ventures with PRC partners, and new entities formed by non-PRC investors to in-license drug candidates from PRC companies, are also common. Because biotechnology would be a prohibited-only sector, these structures would warrant careful review under the Proposed Rules, both for new investments and for ongoing operations. [Fn 1]

Offshore Topcos as Covered Foreign Persons

An Offshore Topco is not ordinarily incorporated in a country of concern, but it could still be a covered foreign person. An entity that holds a voting or equity interest, a board seat or contractual control rights in a covered foreign person engaged in a prohibited or notifiable technology would itself be a covered foreign person if it derives more than 50% of its revenue or net income from, or incurs more than 50% of its capital expenditures or operating expenses through, such persons. [Fn 1] For a pre-revenue biotechnology company whose research and development is conducted principally through a PRC WFOE, the operating expense or capital expenditure test may be met even though the Offshore Topco has no revenue. An Offshore Topco could also be a covered foreign person if it has a principal place of business in the PRC, or if it is 50% or more owned by, or subject to the direction or control of, PRC individuals, PRC entities or the PRC government. [Fn 1] In each case, a U.S. person's acquisition of equity or contingent equity in the Offshore Topco could be a prohibited transaction.

Use of Intermediaries

The Proposed Rules provide that an indirect covered transaction includes a U.S. person's use of an intermediary to engage in a transaction that would be covered if the U.S. person engaged in it directly. [Fn 1] Treasury states that this could include not only the use of an intermediary entity or individual, but also a transaction structure that obfuscates or conceals the U.S. person's role. [Fn 1] Interposing an Offshore

© 2026 Gunderson Dettmer; all rights reserved.

Topco, special purpose vehicle or in-licensing entity between a U.S. investor and a PRC operating company would not, by itself, take a transaction outside the Program, and these structures should be evaluated on their substance.

Intracompany Transfers to PRC Subsidiaries

The intracompany transfer exception would cover only the provision of cash or credit by a U.S. person parent to its controlled foreign entity to (a) support operations that are not in a prohibited or notifiable technology, or (b) maintain prohibited or notifiable operations that the controlled foreign entity was engaged in before the effective date of the final rules. [Fn 1] Treasury has requested comment on what it means to "maintain operations," with options ranging from funding only upkeep and maintenance, to permitting upgrades and improvements without expanded production, to permitting expanded production or improved technological capabilities. [Fn 1] For U.S. biotechnology, semiconductor and other companies with subsidiaries in a country of concern, the scope of this exception may significantly affect the ability to continue operations at those subsidiaries. A narrow construction could, for example, limit a U.S. parent's ability to fund new research programs at a PRC WFOE. The exception is also framed around transfers by a U.S. person parent, and it is not yet clear how it would apply where an Offshore Topco funds its WFOE at the direction of U.S. officers or directors.

U.S. Officers and Directors of Offshore Topcos

An Offshore Topco is not a U.S. person merely because it has U.S. investors, officers or directors, although if a U.S. person holds more than 50% of its outstanding voting interest or board voting power, the Offshore Topco and its subsidiaries would be controlled foreign entities of that U.S. person. [Fn 1] Separately, a U.S. person (including a U.S. citizen or permanent resident, wherever located) who serves as an officer or director of an Offshore Topco and has authority to make or substantially participate in its decisions would be treated as engaging in a covered transaction if that person exercises that authority to direct, order, decide upon or approve a transaction that the person knows would be covered if engaged in by a U.S. person. [Fn 1] In effect, the Offshore Topco's transaction is analyzed as if the U.S. officer or director had engaged in it directly. This could reach, for example, the Offshore Topco's capitalization of a WFOE to launch a new covered biotechnology program, or its formation of a joint venture with a PRC partner. Because the COINS Act extends this concept to notifiable as well as prohibited transactions, a U.S. officer or director could also have a filing obligation. [Fn 1]

© 2026 Gunderson Dettmer; all rights reserved.

A U.S. person who recuses from approval and decision-making (including making a recommendation), from reviewing, editing, commenting on, approving and signing transaction documents, and from negotiating with the counterparty would not be treated as directing the transaction. [Fn 1] This is a structuring point worth considering prospectively. Companies with Offshore Topco structures, and investors with board designees on those companies, should identify which board and management decisions may implicate the Program and consider adopting written recusal protocols for U.S. officers and directors.

What is the Impact on Existing and New Investments?

The Proposed Rules would apply only from the effective date of the final rules. The Current Rules continue to govern transactions completed between January 2, 2025 and that effective date. [Fn 1] However:

- **Follow-on investments are not grandfathered.** There is no general exception for follow-on investments, so a follow-on round in an existing portfolio company after the effective date would be assessed under the new rules. [Fn 1]
- **Conversions.** The conversion of a contingent equity interest or convertible debt would be a separate covered transaction where the instrument was acquired on or after the effective date. Each acquisition and conversion should be assessed. [Fn 1]
- **Binding capital commitments.** Transactions made under a binding, uncalled capital commitment entered before the effective date would be excepted, although they may remain subject to the Current Rules. [Fn 1]

For new investments, the knowledge standard and diligence expectations of the Current Rules carry over. A U.S. person is treated as knowing what it had reason to know or could have learned through a reasonable and diligent inquiry. Treasury will consider, among other things, the questions asked of the target, the contractual representations obtained or sought, use of public and commercial databases, warning signs such as evasive responses, and, as a new factor, whether the U.S. person appropriately considered information made available by Treasury before closing. [Fn 1] As we noted in our prior alert, a company's willingness to give a representation is not enough on its own. ***Investors should conduct their own assessment and preserve a record of their diligence.*** [Fn 4]

© 2026 Gunderson Dettmer; all rights reserved.

Can Investors Obtain Guidance from Treasury?

For the first time, a person with a direct financial interest in an actual, prospective transaction could request confidential, non-binding feedback, or anonymized public guidance, on whether that transaction would be **prohibited**. The process would not cover whether a transaction is notifiable. [Fn 1] The requirements are demanding. Material terms must be set out in a binding document, and the request must include all operative documents, term sheets, draft agreements and side letters, along with a signed certification. Treasury would have no deadline to respond. [Fn 1] In practice, this process may be difficult to fit within typical venture deal timelines.

What are the Penalties for Non-Compliance?

Under the Proposed Rules, Treasury could impose civil penalties of up to the greater of $250,000 (as adjusted for inflation) or twice the value of the transaction and could compel divestment of prohibited transactions. [Fn 1] Treasury notes that the COINS Act includes civil penalty provisions but not criminal penalty provisions. Criminal exposure would remain for false statements to the government and under other applicable law. [Fn 1] The Proposed Rules also formalize voluntary self-disclosure, which Treasury will consider (including its timeliness) in determining its response to a violation. [Fn 1]

Treasury has already begun enforcing the Current Rules. In July 2026, Treasury penalized Amidi, LLC $200,000 for failing to notify Treasury of an investment of approximately $92,478 that its controlled Chinese fund made in a Chinese embodied-AI Company. Treasury identified the transaction through “its regular and ongoing compliance and market monitoring efforts.” [Fn 6] The penalty was more than twice the value of the investment, it involved a small, early-stage deal, and liability ran to the U.S. parent for a transaction undertaken by its foreign subsidiary.

Gunderson Recommendations

For Companies

- **Map your country-of-concern touchpoints.** Identify subsidiaries, R&D teams, founders and significant stockholders who manage the business from abroad, investors, and joint venture or collaboration partners. Your Company’s own status could affect whether U.S. investors are able to invest.

© 2026 Gunderson Dettmer; all rights reserved.

- **Assess your own outbound activity.** A U.S. Company that invests in, forms a joint venture with, or funds a subsidiary in a country of concern is a U.S. person with its own obligations under the Program.
- **Review offshore holding structures.** If your Company has a Cayman Islands, British Virgin Islands or other offshore holding company with a PRC WFOE, joint venture or in-licensing arrangement, assess whether the holding company may be a covered foreign person, how continued funding of the subsidiary fits within the intracompany transfer exception, and which decisions U.S. officers and directors should recuse from.
- **Prepare for expanded investor diligence.** Expect longer questionnaires and new representations on covered foreign person status, technology classification, and the restricted-list status of affiliates.
- **Structure collaborations with care.** Where possible, consider fee-for-service, sponsored research or licensing structures over arrangements with equity, convertible or profit-sharing features.

For Investment Funds

- **Update diligence questionnaires and processes** to cover the new countries, sectors, restricted lists and affiliate concepts, and document the diligence for every deal.
- For new investments, update representations and covenants that track Current Rules definitions, and add representations on principal places of business, controlling persons, and listed affiliates and subsidiaries.
- **Inventory the portfolio.** Identify existing PRC-related and other country-of-concern portfolio companies in SI, biotechnology, photonics, high-bandwidth memory, hypersonics or other expanded areas, and plan for follow-on investments and conversions.
- **Adopt written recusal procedures** for U.S. persons serving on investment committees or boards of non-U.S. funds and portfolio companies.
- **Diligence offshore holding company structures**, including the share of revenue, net income, capital expenditures and operating expenses attributable to PRC subsidiaries, and confirm recusal arrangements for fund designees serving on those boards.

© 2026 Gunderson Dettmer; all rights reserved.

- **Anticipate LP requests** for binding contractual assurances and excuse rights and decide in advance what your side letters can accommodate.

For Limited Partners

- **Continue to require binding contractual assurances**, or confirm that your commitment qualifies under the $2 million exception.
- **Diligence existing fund holdings** before committing to a fund or acquiring a secondary interest.
- **Review LP advisory committee seats and other governance rights** against the "standard minority shareholder protections" list.

For General Counsel

- **Consider submitting comments by December 7, 2026**, directly or through an industry group. Treasury specifically requested comment on the SI prohibition, the scope of the biotechnology sector, the definition of "parent," the meaning of "maintain operations" under the intracompany transfer exception, and the business development company exception. [Fn 1]
- **Confirm compliance with the Current Rules**, including notifications for transactions by controlled foreign entities, in light of Treasury's first enforcement action. [Fn 6]
- **Update compliance policies and training** to reflect the Proposed Rules, and plan to finalize updates once the final rules are issued.
- **Evaluate pending transactions and commitments.** Consider whether pending deals, binding capital commitments or contingent instruments should be completed before the effective date, consistent with the Current Rules.
- **Escalate potential issues promptly.** Timeliness matters for voluntary self-disclosure, including whether Treasury already knows of the conduct. [Fn 1]

What Happens Next?

Treasury will review public comments and issue final rules, which will set the effective date. Until then, the Current Rules remain in force. Key dates are summarized below. [Fn 1] [Fn 6]

© 2026 Gunderson Dettmer; all rights reserved.

Date	Event
January 2, 2025	Current Rules (31 C.F.R. Part 850) take effect.
December 10, 2025	House passes the final FY2026 NDAA, including the COI
December 17, 2025	Senate agrees to the final FY2026 NDAA.
December 18, 2025	President signs the NDAA into law (Pub. L. No. 119-60), e COINS Act.
October 7, 2026	Treasury announces its first civil penalty under the progra
October 22, 2026	Treasury releases the Proposed Rules (published in the F Register on October 26, 2026).
December 7, 2026	**Public comment deadline.**
Approximately March 2027	Statutory deadline for final regulations (450 days after en effective date will be set in the final rule.

How Can GD Help?

If you have questions about how the Proposed Rules may affect your Company, fund or portfolio, would like help updating diligence processes, transaction documents, fund documents or side letters, or would like to submit public comments to help shape the final rules, please contact your Gunderson attorney before December 7, 2026. You can also reach out to insights@gunder.com.

[Fn 1] U.S. Department of the Treasury, Notice of Proposed Rulemaking, “Outbound Investment Security Program Regulations,” (published Oct. 26, 2026) (Doc. No. 2026-21786). https://www.federalregister.gov/documents/2026/10/26/2026-21786/outbound-investment-security-program-regulations

[Fn 2] U.S. Department of the Treasury, Press Release, “Treasury Issues Proposed Rule to Implement Comprehensive Outbound Investment National Security Act” (Oct. 22, 2026). https://home.treasury.gov/news/press-releases/sb0667

[Fn 3] Gunderson Dettmer, “Client Insight: Biden Administration Issues Executive Order and Proposed Regulations Restricting Outbound U.S. Investment into China”

© 2026 Gunderson Dettmer; all rights reserved.

(Aug. 17, 2023). https://www.gunder.com/en/news-insights/insights/client-insight-biden-administration-issues-executive-order-and-proposed-regulations-restricting-outbound-u-s-investment-into-china

[Fn 4] Gunderson Dettmer, “Client Insight: Biden Administration Finalizes Regulations Restricting Outbound U.S. Investment into China” (Nov. 13, 2024). https://www.gunder.com/en/news-insights/insights/client-insight-biden-administration-finalizes-regulations-restricting-outbound-us-investment-into-china

[Fn 5] U.S. Department of the Treasury, Outbound Investment Security Program, Program Regulations (31 C.F.R. Part 850). https://home.treasury.gov/policy-issues/international/outbound-investment-program/program-regulations

[Fn 6] U.S. Department of the Treasury, Press Release, “Treasury Announces Enforcement Penalty for Violation of Outbound Program” (Oct. 7, 2026). https://home.treasury.gov/news/press-releases/sb0652/

[Fn 7] Congress.gov, “Actions: S.1071, National Defense Authorization Act for Fiscal Year 2026” (Pub. L. No. 119-60). https://www.congress.gov/bill/119th-congress/senate-bill/1071/all-actions

[Fn 8] Office of U.S. Senator John Cornyn, Press Release, “Cornyn Secures Key Provisions in NDAA for Fiscal Year 2026” (Dec. 17, 2025). https://www.cornyn.senate.gov/news/cornyn-supported-defense-bill-passes-senate-3/

[Fn 9] Congressional Research Service, “Regulation of U.S. Outbound Investment to China” (IF12629). https://www.congress.gov/crs_external_products/IF/HTML/IF12629.html

[Fn 10] U.S. Department of the Treasury, Outbound Investment Security Program (program homepage). https://home.treasury.gov/policy-issues/international/outbound-investment-program/

Related Services

AI & Machine Learning

Fund Formation

Life Sciences

Transactional Regulatory: Antitrust, HSR & CFIUS

© 2026 Gunderson Dettmer; all rights reserved.

Featured Insights

CLIENT NEWS

Gunderson Dettmer Advises Dialpad on Acquisition of Ada

CLIENT NEWS

Infisical Raises $40 Million Series B at $600 Million Valuation

FIRM NEWS

Gunderson Dettmer Named a Top 10 Investor Counsel in The Deal’s Q3 2026 PIPEs League Tables

INSIGHTS

WSJ Pro Venture Capital Interviews Gunderson Dettmer Partner Melissa Marks for “VCs Love Pro Rata Rights. Should They?”

INSIGHTS

Client Insight: Quarterly Employment Law Update – Fall 2026

CLIENT NEWS

Gunderson Dettmer Represents Jefferies, Leerink Partners, TD Cowen in $287.5 Million Arcus Biosciences Common Stock Offering

INSIGHTS

Capital Analytics Associates Features Gunderson Dettmer Partner John Yates in “Spotlight On” Series, Discusses Atlanta and AI Innovation

CLIENT NEWS

Town Raises $108 Million Series B at a $1 Billion Valuation

FIRM NEWS

Lawdragon Recognizes Nineteen Gunderson Dettmer Attorneys as Leading Dealmakers in America

© 2026 Gunderson Dettmer; all rights reserved.

CLIENT NEWS

Dragoneer Leads Ramp’s $1.85 Billion Financing at $60 Billion Valuation

EVENTS

Webinar: Taking a Company Public: Lessons from IPO-Tested GCs

CLIENT NEWS

Gunderson Dettmer Advises Zola on Definitive Agreement to Be Acquired by The Knot Worldwide

© 2026 Gunderson Dettmer; all rights reserved.