

# Additional Information on Final Regulations Implementing Outbound Investment Executive Order (E.O. 14105)




October 28, 2024

## BACKGROUND

On October 28, 2024, the U.S. Department of the Treasury (Treasury) issued final regulations (the Final Rule) implementing [Executive Order 14105](#), “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern,” issued by President Biden on August 9, 2023 (the Outbound Order). The Final Rule provides the operative regulations and explanatory discussion regarding their intent and application. The regulations go into effect on January 2, 2025.

The Outbound Order describes the strategy that countries of concern are engaged in to advance the development of sensitive technologies and products. As part of this strategy, countries of concern are exploiting or have the ability to exploit certain United States outbound investments, including certain intangible benefits that often accompany United States investments and that help companies succeed. These intangible benefits include enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. Certain United States outbound investments may accelerate and enhance the successful development of sensitive technologies and products by countries of concern that develop them to counter United States and allied capabilities. In the Outbound Order, the President identifies the People’s Republic of China, along with the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau, as a country of concern.

The Biden-Harris Administration is committed to keeping America safe and defending U.S. national security by protecting technologies that are critical to the next generation of military innovation. Cross-border investment flows have long contributed to U.S. economic vitality, and the implementation of the Outbound Order is consistent with our longstanding commitment to open investment that does not threaten our national security interests.

The Final Rule reflects Treasury's consideration of public comments received in response to its August 2023 [Advance Notice of Proposed Rulemaking](#)  (ANPRM) and its July 2024 [Notice of Proposed Rulemaking](#) (NPRM) regarding implementation of the Outbound Order. In developing the Final Rule, Treasury consulted with the Department of Commerce and numerous other U.S. Government departments and agencies. Additionally, Treasury engaged with U.S. allies and partners and will continue coordinating closely with them to advance the goals of the Outbound Order.

## KEY ELEMENTS OF THE FINAL RULE

The following provides a general overview of the key elements of the Final Rule. The full text of the Final Rule should be reviewed for further details, including important definitions.

- ***Requirements on U.S. persons:*** The Final Rule places obligations on U.S. persons, including prohibition of certain transactions and a notification requirement for certain other transactions. A U.S. person includes any United States citizen or lawful permanent resident, as well as any entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entity, and any person in the United States.
- ***Knowledge standard:*** The obligations of a U.S. person under the Final Rule apply if such person has knowledge of relevant facts or circumstances related to a transaction. Under the Final Rule, a U.S. person has knowledge if the U.S. person possesses actual knowledge that a fact or circumstance exists or is substantially certain to occur, if the U.S. person possesses an awareness of a high probability of a fact or circumstance's existence or future occurrence, or if the U.S. person could have possessed such information through a reasonable and diligent inquiry. To provide clarity, the Final Rule includes factors that Treasury will consider in assessing whether a U.S. person undertook a reasonable and diligent inquiry. Such factors incorporate information that should be ascertainable as well as contractual assurances that should be obtainable through reasonable due diligence. The Final Rule also clarifies that consideration will be given to the totality of the facts and circumstances related to the transaction.
- ***Specific categories of covered transactions:*** The Final Rule applies to certain transactions by U.S. persons, including the acquisition of an equity interest or contingent equity interest; certain debt financing that affords certain rights to the lender; the conversion of a contingent equity interest; a greenfield investment or other corporate

expansion; entrance into a joint venture; and certain investments as a limited partner or equivalent (LP) in a non-U.S. person pooled investment fund.

- ***Involving covered foreign persons:*** The Final Rule applies to certain transactions by a U.S. person that involve a covered foreign person—that is, a person of a country of concern that is engaged in a covered activity related to defined sub-sets of technologies and products or a person that has a voting or equity interest, board seat, or certain powers with respect to such a person of a country of concern where more than 50 percent of one of several key financial metrics of the person is attributable to one or more such persons of a country of concern. A person of a country of concern includes an individual who is a citizen or permanent resident of a country of concern (and not a U.S. citizen or permanent resident of the United States); an entity that is organized under the laws of, headquartered in, incorporated in, or with a principal place of business in a country of concern; the government of a country of concern or a person acting for or on behalf of the government of a country of concern; or an entity that is directly or indirectly at least 50 percent-owned by any persons or entities in any of the aforementioned categories.
- ***Excepted transactions:*** The Final Rule excepts certain types of transactions from the rule's coverage, in some cases, provided that such transactions do not afford a U.S. person certain rights that are not standard minority shareholder protections. Some of these excepted transactions include:
  - ***Publicly traded securities:*** An investment by a U.S. person in a publicly traded security or a security issued by a registered investment company, such as an index fund, mutual fund, or exchange-traded fund;
  - ***Certain LP investments:*** A U.S. person's investment made as an LP in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund, if such investment is \$2,000,000 or less or if the U.S. person has received a contractual assurance that its capital will not be used by the fund to engage in what would be a prohibited or notifiable transaction;
  - ***Derivatives:*** A U.S. person's investment in certain derivative securities;
  - ***Buyouts of country of concern ownership:*** A U.S. person's full buyout of all country of concern ownership of an entity, such that the entity does not constitute a covered foreign person following the transaction;
  - ***Intracompany transactions:*** An intracompany transaction between a U.S. person and its controlled foreign entity to support operations that are not covered activities or to

maintain ongoing operations with respect to covered activities that the controlled foreign entity was engaged in prior to January 2, 2025;

- ***Certain pre-Final Rule binding commitments:*** A transaction fulfilling a binding, uncalled capital commitment entered into prior to January 2, 2025;
- ***Certain syndicated debt financings:*** Where the U.S. person, as a member of a lending syndicate, acquires a voting interest in a covered foreign person upon default and the U.S. person cannot initiate any action vis-à-vis the debtor and is not the syndication agent;
- ***Equity-based compensation:*** A U.S. person's receipt of employment compensation in the form of an award or grant of equity or an option to purchase equity in a covered foreign person, or the exercise of such option; and
- ***Third-country measures:*** Certain transactions involving a person of a country or territory outside of the United States may be excepted transactions where the Secretary of the Treasury determines that the country or territory is addressing national security concerns related to outbound investment and the transaction is of a type for which associated national security concerns are likely to be adequately addressed by the actions of that country or territory.
- ***National interest exemption:*** The Final Rule allows a U.S. person to seek an exemption from the application of the prohibition or notification requirement on the basis that a transaction is in the national interest of the United States. Additional information on the process for seeking an exemption will be made available on the program's website.
- ***Notification requirements:*** A U.S. person subject to the notification requirement is required to file a notification form with Treasury that includes information related to the transaction, such as details about the U.S. person, the covered foreign person, the covered transaction, and the relevant national security technologies and products. The Final Rule requires that a notification be filed no later than 30 days after the relevant covered transaction is completed or, where a U.S. person acquires actual knowledge after the completion date of a transaction that the transaction would have been a covered transaction if such knowledge had been possessed at the time of the transaction, no later than 30 days after the U.S. person's acquisition of such knowledge.

## NATIONAL SECURITY TECHNOLOGIES AND PRODUCTS

The Final Rule identifies the sub-sets of national security technologies and products identified in the Outbound Order that are subject to the regulations:

- ***Semiconductors and microelectronics:***
  - ***Prohibited transactions:*** Covered transactions related to certain electronic design automation software; certain fabrication or advanced packaging tools; the design or fabrication of certain advanced integrated circuits; advanced packaging techniques for integrated circuits; and supercomputers are prohibited.
  - ***Notifiable transactions:*** Covered transactions related to the design, fabrication, or packaging of integrated circuits not otherwise covered by the prohibited transaction definition are subject to a notification requirement.
- ***Quantum information technologies:***
  - ***Prohibited transactions:*** Covered transactions related to the development of quantum computers or production of any critical components required to produce a quantum computer; the development or production of certain quantum sensing platforms; and the development or production of certain quantum networks or quantum communication systems are prohibited.
- ***Certain artificial intelligence (AI) systems:***
  - ***Prohibited transactions:*** Covered transactions related to the development of any AI system designed to be exclusively used for, or intended to be used for, certain end uses are prohibited. In addition, covered transactions related to the development of any AI system that is trained using a quantity of computing power greater than  $10^{25}$  computational operations, or trained using primarily biological sequence data and a quantity of computing power greater than  $10^{24}$  computational operations, are prohibited.
- ***Notifiable transactions:*** Covered transactions related to the development of any AI system not otherwise covered by the prohibited transaction definition, where such AI system is: designed or intended to be used for certain end uses or applications; or trained using a quantity of computing power greater than  $10^{23}$  computational operations, are subject to a notification requirement.

## VIOLATIONS

The Final Rule outlines the penalty and disclosure framework for violations:

- **Penalties:** Violations are subject to civil and criminal penalties as set forth in the International Emergency Economic Powers Act (IEEPA). In the event of a violation, Treasury is authorized to impose civil penalties and could also refer criminal violations to the Attorney General. Under IEEPA, as of the issuance of the Final Rule the maximum civil penalty for a violation is the greater of \$368,136 (as adjusted annually for inflation) or twice the value of the transaction that is the basis for the violation.
- **Divestment:** The Secretary of the Treasury can take any action authorized under IEEPA to nullify, void, or otherwise require divestment of any prohibited transaction.
- **Voluntary self-disclosure:** U.S. persons may submit a voluntary self-disclosure if they believe their conduct may have resulted in a violation of any part of the Final Rule. Such self-disclosure will be taken into consideration during Treasury's determination of the appropriate response to the self-disclosed activity.

The Final Rule can be accessed via the program's website at <https://home.treasury.gov/policy-issues/international/outbound-investment-program>.

## FREQUENTLY ASKED QUESTIONS

### ***Why is Treasury issuing these regulations?***

The Outbound Order directs the Secretary of the Treasury, in consultation with other departments and agencies, to promulgate rules and regulations, including prescribing definitions of terms as necessary to implement the Outbound Order and administer the new program. The Final Rule includes specific requirements for U.S. persons and reflects Treasury's consideration of public comments received in response to its August 2023 ANPRM and July 2024 NPRM.

### ***When does the rule take effect?***

January 2, 2025. Transactions with a completion date on or after January 2, 2025 are subject to the Final Rule, including the prohibition and notification requirements, as applicable.

### ***What are the key differences between the NPRM and the Final Rule?***

In evaluating public comments on the August 2023 ANPRM and the July 2024 NPRM, and considering feedback from stakeholders, allies and partners, and consulting with relevant U.S. Government departments and agencies, Treasury made certain changes intended to address feedback raised by commenters including with respect to the clarity of the rule and compliance.

Key areas that have evolved since the NPRM include:

- The scope of coverage of transactions involving AI systems;
- The knowledge standard (which describes the knowledge a U.S. person must have about certain facts and circumstances related to a transaction to trigger obligations under the Final Rule);
- The scope of the prohibition on U.S. persons “knowingly directing” certain transactions;
- The scope of LP investments that are covered transactions under the Final Rule and those that are excepted;
- The definition of covered foreign person with respect to persons holding an interest in a person of a country of concern;
- The treatment of certain debt and contingent equity transactions;
- Coverage of derivative transactions;
- The exception of certain transactions between a U.S. person and its controlled foreign entity;
- The exception of employee compensation in the form of stock or stock options; and
- Confidential treatment of information submitted to the U.S. Government under the Final Rule.

The full text of the Final Rule should be reviewed for further details.

### ***How does a U.S. person file a notification?***

Notifications are required to be submitted via electronic filing. Treasury will post instructions on how to file on Treasury’s Outbound Investment Security Program website prior to the effective date of the Final Rule.

### ***Can U.S. persons still invest in a country of concern?***

The Final Rule does not prohibit all investment activity in countries of concern. Consistent with the Outbound Order, the Final Rule is narrowly targeted at certain types of investments in country of concern entities and related to sensitive technologies and products critical for military, intelligence, surveillance, or cyber-enabled capabilities. The Final Rule focuses on discrete categories of transactions involving sub-sets of technologies and products in an effort to protect national security, maximize compliance, and minimize unintended consequences. In addition, certain transactions are excepted, including those in publicly traded securities and derivatives, certain LP investments, certain intracompany transactions



between U.S. parents and controlled foreign entities, and certain employee compensation in the form of stock or stock options.

The United States supports an open investment environment consistent with the protection of U.S. national security.

***Does this program set-up a screening process or case-by-case review of investments?***

No. Consistent with the Outbound Order, U.S. persons are prohibited from undertaking certain transactions and are required to notify Treasury of certain other transactions. There will not be a case-by-case review of transactions. The relevant U.S. person undertaking a transaction has an obligation to determine whether the given transaction is prohibited, permissible but subject to notification, or not covered by the Final Rule because either it is an excepted transaction or it is not within the jurisdiction set forth under the Final Rule. A U.S. person can also seek a national interest exemption from the notification requirement or prohibition.

***How will U.S. individuals and companies be expected to comply with this program?***

The Final Rule places certain requirements on U.S. persons, including recordkeeping and notification requirements. The Final Rule also establishes a prohibition on certain U.S. person transactions. A U.S. person's knowledge of certain facts or circumstances is generally a prerequisite for obligations under the Final Rule. Treasury therefore anticipates that U.S. persons should be able to comply with the Final Rule through a reasonable and diligent transactional due diligence and compliance process. A person who fails to undertake a reasonable and diligent inquiry prior to a transaction may be responsible for knowledge it could have acquired.

***Are U.S. nationals working at foreign entities going to be impacted?***

U.S. persons are prohibited from knowingly directing transactions by non-U.S. entities that the U.S. person knows at the time of the transaction would be prohibited if engaged in by a U.S. person. The Final Rule provides for a U.S. person's recusal from participation in certain activities to avoid violating this prohibition. The Final Rule does not restrict a U.S. person from generally working at any entity that receives investment, nor does it restrict a U.S. person from working at an entity making such an investment.

***Are technology licensing, consulting, or procurement contracts covered?***

Certain transactions that involve the acquisition of equity or a contingent equity interest, conversion of a contingent equity interest, provision of debt financing that carries certain



rights, greenfield investments or other corporate expansions, the entrance into joint ventures, or certain LP investments are covered. Activities that do not meet the definition of a covered transaction are not subject to the program except where they are undertaken to evade or avoid the Final Rule.

***Will Treasury publish a list of designated covered foreign persons under the program?***

At this time, Treasury does not intend to publish a list of entities designated as covered foreign persons. Instead, Treasury expects a U.S. person to conduct a reasonable and diligent inquiry to determine whether a transaction is covered under the Final Rule, including whether any covered foreign persons are involved.

***What are the penalties for violations of the program?***

The Outbound Order authorizes the Secretary of the Treasury to investigate violations of the regulations, including pursuing civil penalties available under IEEPA and referring criminal violations to the Attorney General. The Secretary of the Treasury may also, as appropriate, take action authorized under IEEPA to nullify, void, or otherwise compel the divestment of any prohibited transaction. Under IEEPA, currently the maximum civil penalty for a violation is the greater of \$368,136 or twice the value of the transaction that is the basis for the violation.

***Is Treasury working with U.S. allies and partners?***

Treasury, working with the U.S. Department of State, has engaged with U.S. allies and partners regarding the important national security goals of the Outbound Order. The Outbound Order and the scope of the program reflect discussions with the G7 and other ally and partner engagements.

Treasury is encouraged by the interest and attention given to this issue by allies and partners, including in the July 2024 G7 Apulia Leaders' Communiqué. Treasury also notes that the European Commission and United Kingdom have begun processes to consider whether and how to address outbound investment risks.

***Does Treasury intend to put out further details on the program?***

Prior to the effective date of the Final Rule, Treasury will provide on its Outbound Investment Security Program website instructions on how to file a notification and how to request a national interest determination. In addition, Treasury anticipates providing additional information to help facilitate compliance by U.S. persons. Treasury also anticipates engaging in stakeholder outreach and education on the requirements in the Final Rule.

Further, with respect to the exception regarding certain transactions with or involving persons of designated territories or countries outside the United States, Treasury anticipates making available on its website more information on the factors the Secretary of the Treasury will consider when making a designation of a country or territory or a determination as to the types of transactions for which the relevant national security concerns are likely to be adequately addressed by measures taken or that may be taken by the government of the relevant country or territory.

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