



February 2018

COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

Treasury Should Coordinate Assessments of Resources Needed to Address Increased Workload

GAO Highlights

Highlights of [GAO-18-249](#), a report to congressional requesters

Why GAO Did This Study

The United States economy has historically been the largest recipient of foreign direct investment in the world—receiving \$373 billion in 2016, according to U.S. government statistics. Ensuring that these foreign investments do not harm national security can be a challenge. CFIUS is an interagency group that reviews transactions under its authority—certain foreign acquisitions or mergers of U.S. businesses—to determine their effects on U.S. national security, while maintaining an open investment climate. If CFIUS identifies concerns, it may work with parties to the transaction to mitigate them. In rare cases, CFIUS may recommend that the President block or suspend a transaction.

GAO was asked to review the CFIUS process and possible changes to that process. This report (1) examines changes in CFIUS's workload and staffing from 2011 through 2016, and (2) provides information on stakeholder views on potential changes to CFIUS. GAO analyzed CFIUS information on staffing levels and transactions reviewed, and interviewed officials from member agencies, selected nonmember agencies that have CFIUS-related expertise, and knowledgeable external experts, such as think tanks.

What GAO Recommends

Treasury, as CFIUS lead, should coordinate member agencies' efforts to better understand the staffing levels needed to address the current and projected CFIUS workload associated with core committee functions. Treasury concurred.

View [GAO-18-249](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov or Marie Mak at (202)-512-4841 or makm@gao.gov.

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COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

Treasury Should Coordinate Assessments of Resources Needed to Address Increased Workload

What GAO Found

The Committee on Foreign Investment in the United States (CFIUS) has experienced an increased workload in recent years, and member agency officials have expressed concerns that CFIUS staff levels may not be sufficient to complete committee functions. Officials attribute the increased workload to an increase of over 50 percent in the volume of transactions reviewed from 2011 to 2016 and the complexity of those reviews in terms of technology, transaction structure, and national security concerns, compared to a modest increase in the number of staff assigned to CFIUS. Member agency officials stated that CFIUS is able to review all transactions that have been submitted to the committee. However, officials and external experts expressed concerns that agencies were limited in their ability to complete other functions, such as identifying transactions about which they have not been voluntarily notified but that may pose a risk. *Standards for Internal Control in the Federal Government* states that management should establish the organizational structure necessary to achieve its objectives and periodically evaluate this structure. Treasury—the agency that leads CFIUS—has not coordinated member agencies' efforts to better understand the staffing levels needed to address the current and future workload associated with core functions of the committee. Without this information, CFIUS may be limited in its ability to fulfill its objectives and address national security concerns.

Table: Committee on Foreign Investment in the United States (CFIUS) Member Agency Staff Compared to the Number of Covered Transactions Reviewed, 2011-2016

	2011	2012	2013	2014	2015	2016	Percentage change 2011-2016
Covered Transactions Reviewed	111	114	97	147	143	172	55%
Number of staff assigned	82	82	79	85	83	91	11%

Source: GAO analysis of Treasury-reported CFIUS cases and agency-reported staffing levels. | GAO-18-249

Officials from CFIUS member agencies and selected nonmember agencies, as well as external experts, expressed a range of views on the potential benefits and drawbacks to possible changes to CFIUS. GAO organized the possible changes into three categories: (1) altering the structure of CFIUS, (2) redefining which transactions should be considered for CFIUS review, and (3) expanding the factors CFIUS considers when evaluating the impacts of a foreign transaction on national security. Agency officials were generally satisfied with CFIUS' structure, such as the committee's chair and membership. Views among officials and experts varied on redefining which transactions should be considered for review, such as requiring CFIUS to review all transactions covered by its authority regardless of notification. Officials and experts generally did not support expanding the list of national security factors CFIUS considers, such as by adding a net economic benefit test. Agency officials and experts agreed that one trade-off related to some possible changes is a likely increase to the CFIUS workload, which they noted is already straining agencies' staff resources.

Contents

Letter		1
	Background	2
	Stakeholders Have Concerns about the Increased CFIUS Workload but Treasury Has Not Coordinated Staffing Level Assessments	13
	CFIUS Member Agencies and External Experts Provided Views on Benefits and Drawbacks of Possible Changes to CFIUS	22
	Conclusions	30
	Recommendation for Executive Action	31
	Agency Comments and Our Evaluation	31
Appendix I	Objectives, Scope, and Methodology	37
Appendix II	Characteristics of Transactions Reviewed by the Committee on Foreign Investment in the United States (CFIUS)	39
Appendix III	Factors to Determine Whether Submitted Transactions Pose a National Security Risk	41
Appendix IV	Reported Number of Agency Staff Assigned to Committee Activities	42
Appendix V	Comments from the Department of the Treasury	43
Appendix VI	Comments from the Department of Agriculture	44
Appendix VII	GAO Contacts and Staff Acknowledgments	45

Tables

Table 1: Covered Transactions Reviewed by the Committee on Foreign Investment in the United States (CFIUS), 2011-2016	14
Table 2: Number of Instances CFIUS Member Agencies Acted as Co-lead in 2016.	18
Table 3: Perspectives Expressed Regarding Possible Changes to the Chairmanship of CFIUS	23
Table 4: Perspectives Expressed Regarding Possible Addition of New Voting Members	23
Table 5: Perspectives Expressed Regarding Possible Extension of Voting Rights to <i>Ex Officio</i> Members	24
Table 6: Perspectives Expressed Regarding Extension of CFIUS Timeframes	25
Table 7: Perspectives Expressed Regarding Expansion of the Definition of a Covered Transaction	26
Table 8: Perspectives Expressed Regarding Mandatory CFIUS Review of All Covered Transactions	27
Table 9: Perspectives Expressed Regarding Mandatory CFIUS Review of Selected Subsets of Covered Transactions	28
Table 10: Perspectives Expressed Regarding Expansion of the National Security Factors CFIUS Should Consider	29
Table 11: Perspectives Expressed Regarding the Addition of a Net Economic Benefit Test to CFIUS Review	30
Table 12: Treasury List of Illustrative Factors the Committee on Foreign Investment in the United States and the President Should Consider in Determining Whether a Transaction Notified to the Committee Poses a National Security Risk	41
Table 13: Reported Number of Member Agency Staff Assigned to Committee on Foreign Investment in the United States (CFIUS) Activities in Fiscal Year 2016	42

Figures

Figure 1: Members of the Committee on Foreign Investment in the United States (CFIUS)	4
Figure 2: Process for Reviewing Transactions Notified to the Committee on Foreign Investment in the United States (CFIUS)	8
Figure 3: Total Number of CFIUS Member Agency Staff Assigned to CFIUS Activities, Compared to the Number of Covered Transactions Reviewed, 2011-2016	19

Abbreviations

CFIUS	Committee on Foreign Investment in the United States
DHS	Department of Homeland Security
DOD	Department of Defense
DOE	Department of Energy
DOL	Department of Labor
FBI	Federal Bureau of Investigation
FCC	Federal Communications Commission
FINSA	Foreign Investment and National Security Act of 2007
HHS	Department of Health and Human Services
ODNI	Office of the Director of National Intelligence
OMB	Office of Management and Budget
OSTP	Office of Science and Technology Policy
State	Department of State
Treasury	Department of the Treasury
USDA	Department of Agriculture

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February 14, 2018

Congressional Requesters

The United States economy has historically been the world's largest recipient of foreign direct investment, receiving \$373.4 billion in 2016, according to the Bureau of Economic Analysis. The Bureau also reported that businesses acquired, established, or expanded by foreign direct investors employed 480,800 workers in the United States that year. Ensuring that these foreign investments do not harm U.S. national security can be a challenge. Concerns have included foreign acquisitions of U.S. companies in traditional sectors, such as semiconductors, and cutting-edge fields, such as artificial intelligence, as well as an increase in the number of acquisitions from certain countries. The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that reviews certain foreign acquisitions, mergers, or takeovers of U.S. businesses to determine the effect of a transaction on the national security of the United States. Informed by the committee's review, the President of the United States has the authority to block or suspend a transaction that threatens to impair the national security of the United States.¹ In the wake of concerns about the acquisition of commercial port operations for six U.S. ports by Dubai Ports World—a company based in the United Arab Emirates—Congress passed the Foreign Investment and National Security Act of 2007 (FINSAs).² The FINSAs amendments currently guide the CFIUS review process. Congressional bills have been introduced proposing ways to reform the CFIUS process.

You asked us to review issues related to the CFIUS process and possible changes to that process. This report (1) examines changes in CFIUS's workload and staffing from 2011 through 2016, and (2) provides information on stakeholder views on potential changes to CFIUS.

¹Congress directed that this authority can only be invoked when no law other than section 721 of the Defense Production Act of 1950 and the International Emergency Economic Powers Act provides adequate and appropriate authority to protect national security, and when there is credible evidence that the foreign interest exercising control might take action that threatens to impair national security.

²FINSAs is the most recent amendment to section 721 of the Defense Production Act of 1950. Pub. L. No. 110-49, 121 Stat. 246 (2007) (amending section 721 of the Defense Production Act of 1950, codified as amended at 50 U.S.C. § 4565).

To address these objectives, we reviewed relevant laws, executive orders, and regulations. We analyzed information on workload and staffing levels to determine the extent to which CFIUS workload and staffing levels have changed from 2011 through 2016, the most recent information available at the time of our review. We also conducted individual semistructured interviews with selected stakeholders, which consisted of officials from the 9 CFIUS voting member agencies, the 2 *ex officio* nonvoting member agencies, and 3 selected nonmember agencies that have CFIUS case-related expertise, as well as with 16 external experts³ to collect views and information on the challenges, such as workload, that CFIUS faces, potential changes to address the challenges, and their possible benefits and drawbacks. The information obtained from these stakeholders cannot be generalized across all stakeholders. Appendix I provides more information on our scope and methodology.

We conducted this performance audit from December 2016 to February 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CFIUS Overview

In 1975, an executive order established CFIUS to monitor the impact of and coordinate U.S. policy on foreign investment in the United States.⁴ In 1988, Congress enacted the Exon-Florio amendment adding section 721 to the Defense Production Act of 1950.⁵ The amendment authorized the President to investigate the impact of certain foreign acquisitions of U.S. companies on national security and to suspend or prohibit acquisitions

³These external experts include former government officials, lawyers who represent parties with transactions notified to CFIUS, and representatives from industry associations and think tanks.

⁴Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (May 7, 1975).

⁵Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, Title V, Subtitle A, Part II, § 5021, 102 Stat. 1425 (Aug. 23, 1988).

that might threaten to impair national security.⁶ FINSA further amended the Defense Production Act, established CFIUS as it currently exists, and guides the committee.⁷ One of the purposes of FINSA's enactment was to ensure national security while promoting foreign investment and the creation of U.S. jobs.

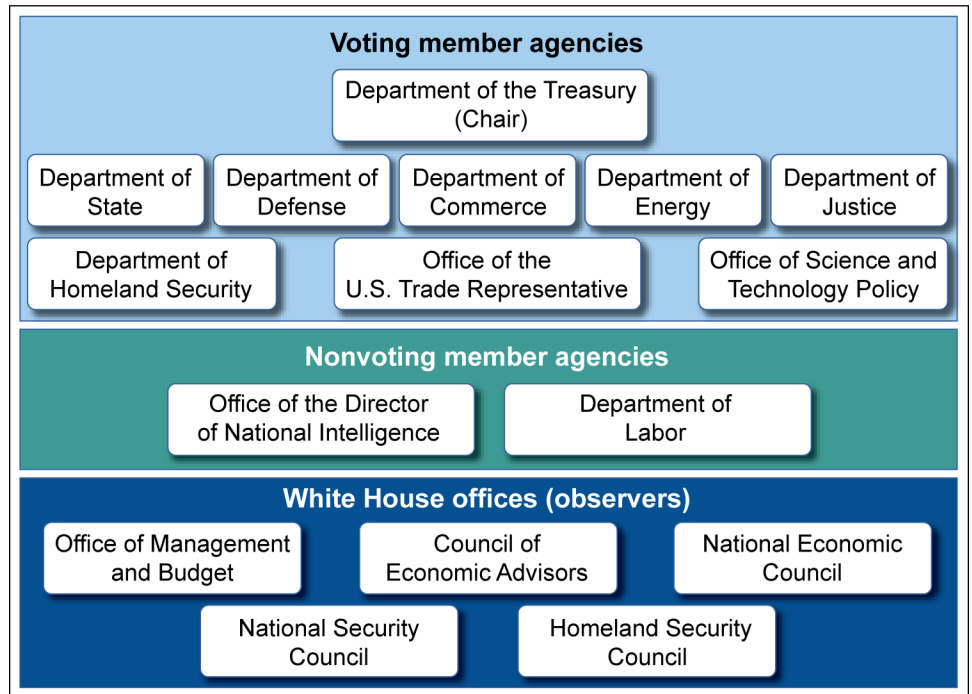
CFIUS reviews transactions involving a large variety of countries and industry sectors to determine if such transactions pose a threat to national security and whether the transactions should be allowed to proceed (for more information on the characteristics of transactions reviewed by CFIUS, see app. II). FINSA does not formally define national security, but provides a number of factors for CFIUS and the President to consider in determining whether a transaction poses a risk. These factors include the potential national security-related effects on U.S. critical technologies and whether the transaction could result in the control of a U.S. business by a foreign government. CFIUS also may consider other factors that it finds appropriate in determining whether a transaction poses a national security risk (for a full list of factors, see app. III).

Under FINSA, CFIUS is chaired by the Secretary of the Treasury and includes voting members from the Departments of Commerce, Defense, Energy, Homeland Security, Justice, and State; and the Offices of the U.S. Trade Representative, and Science and Technology Policy. In addition, the Office of the Director of National Intelligence (ODNI) and the Department of Labor (DOL) are nonvoting *ex officio* members. Various other White House offices also observe and, as appropriate, participate in CFIUS activities (see fig. 1). CFIUS may also solicit perspectives and expertise from nonmember agencies, such as the Department of Agriculture, designating them as members for purposes of the review of particular transactions, as appropriate, which can include negotiating or imposing mitigation measures or referring the transaction to the President for decision. The committee, which meets weekly at a staff level, generally has three core functions: (1) review transactions that have been submitted to the committee and take action as necessary to address any national security concerns; (2) monitor and enforce compliance with mitigation measures; and (3) identify transactions of concern that have not been notified to CFIUS for review.

⁶Pub. L. No. 100-418, § 5021.

⁷50 U.S.C. § 4565.

Figure 1: Members of the Committee on Foreign Investment in the United States (CFIUS)



Source: GAO analysis of agency documents. | GAO-18-249

Note: CFIUS may also solicit perspectives and expertise from nonmember participant agencies, such as the Department of Agriculture, when necessary.

The Secretary of the Treasury, as the chair of CFIUS, is responsible for a number of tasks. According to Department of the Treasury (Treasury) officials, these tasks, including coordinating operations of the committee, facilitating information collection from parties to a transaction,⁸ reviewing

⁸According to federal regulations, the terms “party to a transaction” and “parties to a transaction” mean: “(a) in the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, and the person from which such ownership interest is acquired, without regard to any person providing brokerage or underwriting services for the transaction; (b) in the case of a merger, the surviving entity, and the entity or entities that are merged into that entity as a result of the transaction; (c) in the case of a consolidation, the entities being consolidated, and the new consolidated entity; (d) in the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest; (e) in the case of the acquisition or conversion of convertible voting instruments, the issuer and the person holding the convertible voting instruments; and (f) in the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a) through (e) of this section.” 31 C.F.R. § 800.220.

and sharing data on mergers and acquisitions with member agencies, and managing CFIUS timeframes, are carried out by Treasury employees specifically staffed to support CFIUS. Treasury also communicates on the committee's behalf with the parties, members of Congress, and the general public. When necessary, Treasury is responsible for delivering the committee's recommendation that the President should suspend or prohibit a transaction.

Selecting Transactions for CFIUS Review

In examining covered transactions, CFIUS members seek to identify and address, as appropriate, any national security concerns that arise as a result of the transaction. According to the FINSA amendment, a "covered" transaction is defined as any merger, acquisition, or takeover by or with any foreign person that could result in foreign control of any person engaged in interstate commerce in the United States.⁹ CFIUS reviews "notices" that have been submitted—or notified—to the committee by parties to transactions. Notices to CFIUS contain information about the nature of the transaction and the parties involved. According to guidance on the Treasury website, with limited exceptions, a transaction receives "safe harbor" when CFIUS has completed its review and determines that the transaction may proceed. According to Treasury officials, safe harbor provides the parties to the transaction some certainty that CFIUS and the President will not subject the transaction to review again.

FINSA does not require that parties notify CFIUS of a transaction; however, CFIUS may choose to initiate a review of any covered transaction.¹⁰ Transactions that have not been notified to CFIUS for review are known as "non-notified transactions." According to member agency officials, Treasury and several other member agencies have processes for identifying non-notified transactions for CFIUS to potentially review. For instance, Treasury staff compile data on mergers and

⁹50 U.S.C. § 4565(a)(3). FINSA further defines a covered transaction as one that is proposed or pending after August 23, 1988. There are certain transactions by foreign entities that CFIUS does not have the authority to review. According to regulations, these noncovered transactions include start-ups, as well as acquisitions of assets, if such assets do not constitute a U.S. business, such as equipment or land. See 31 C.F.R. §§ 800.211, 800.226, 800.301, 800.302.

¹⁰50 U.S.C. § 4565(b). If member agencies become aware of a transaction that might be covered that has not been voluntarily notified to CFIUS and may raise national security considerations, CFIUS may invite the parties to the transaction to submit a notice. CFIUS also has the authority to unilaterally initiate a review of the transaction. 50 U.S.C. § 4565(b)(1)(D).

acquisitions and distribute information about potential non-notified transactions to member agencies for review. In addition, according to member agency officials, in 2010, the Federal Bureau of Investigation (FBI) began a working group, now called Project Iceberg, which is responsible for identifying and understanding counterintelligence threats posed by foreign investments that have not been notified to CFIUS. The working group holds monthly meetings that intelligence agencies as well as CFIUS member agencies are invited to attend. In the absence of voluntary reporting by the parties involved or independent discovery of the transaction, it is possible that CFIUS may not review a covered transaction that could pose a risk to national security.¹¹

CFIUS Process for Reviewing Notified Transactions

Based on information including FINSA and regulations, the CFIUS process for reviewing transactions that have been notified to the committee comprises up to four stages: pre-notice consultation, national security review, national security investigation, and presidential action. CFIUS reviews each transaction individually, with a focus on the aspects of the transaction that could pose a risk.¹² For each transaction reviewed, the committee identifies agencies with relevant expertise to act as co-lead with Treasury to guide the transaction through the CFIUS process.¹³ CFIUS reviews are confidential and protected from public disclosure. A CFIUS review could be concluded when CFIUS members reach consensus about whether the transaction should be allowed to proceed, including on the basis of mitigation, if necessary, or when the parties withdraw their notice, whether for commercial reasons or in light of

¹¹According to agency officials, there are thousands of transactions every year that involve foreign entities, not all of which pose a national security concern. CFIUS member agency officials have varying opinions about the number of those that might potentially pose a concern and should be reviewed by CFIUS.

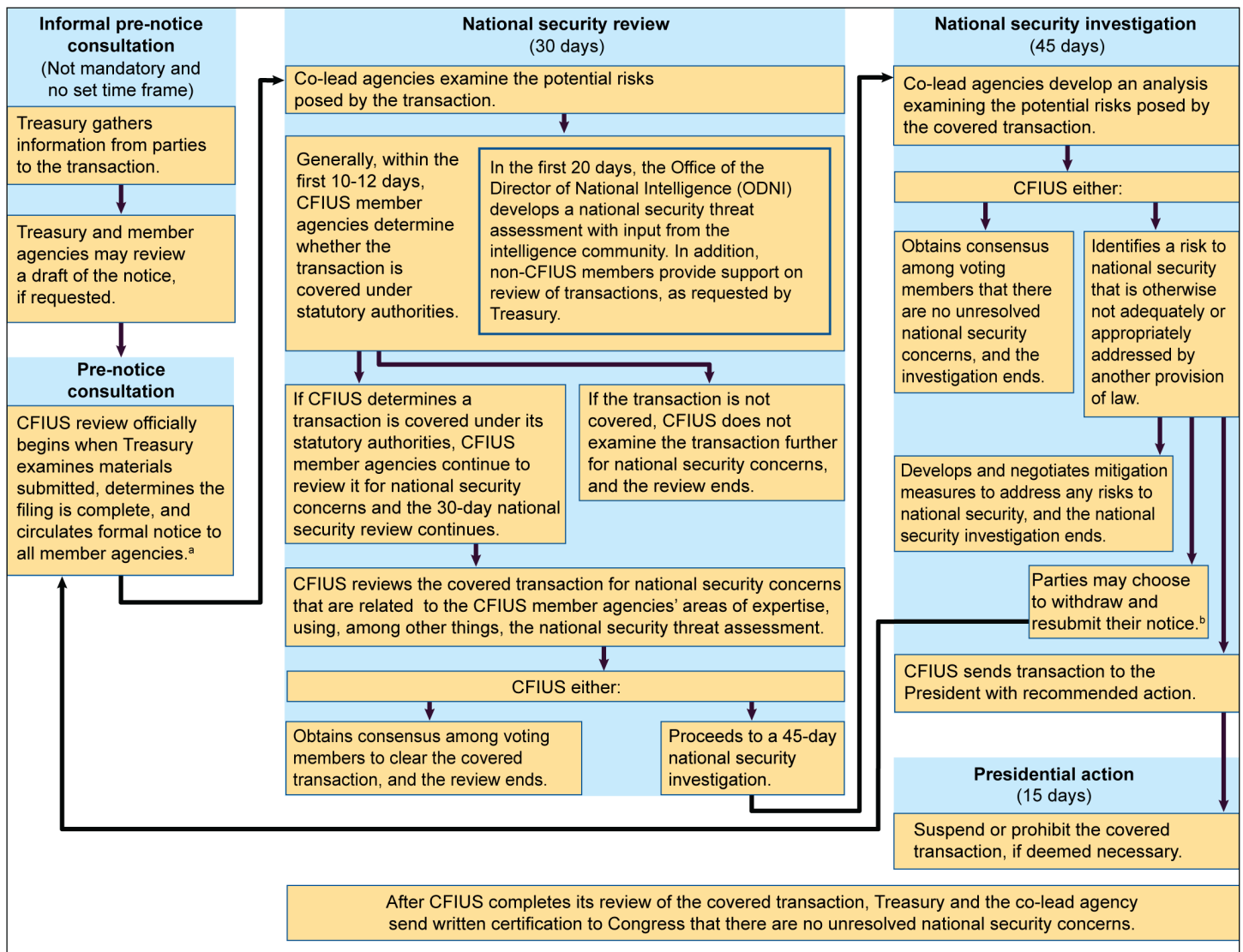
¹²According to Treasury officials, CFIUS considers the intent and capabilities of the acquirer to cause harm to U.S. national security (threat) and the nature of the U.S. business and its susceptibility to impairing U.S. national security (vulnerability) should the vulnerability be exploited or the business compromised. CFIUS views national security risk as a function of the interaction between threat and vulnerability and the potential consequences of that interaction for U.S. national security.

¹³According to Treasury officials, co-lead agencies may include agencies that are not standing members of the committee, but which become ad hoc members for purposes of particular transactions due to their expertise pertaining to such transactions.

CFIUS's national security concerns.¹⁴ Absent one of these conclusions to a CFIUS review, the committee may send the transaction to the President, with a recommendation that the President suspend or prohibit it. See figure 2 for an overview of the steps that comprise the CFIUS process for reviewing selected transactions.

¹⁴CFIUS may also reject and not review a notice if the parties do not satisfy requirements in the regulations, such as not including all of the information required for CFIUS to review the transaction. CFIUS may also reject a notice if, during the course of CFIUS review, there is a material change to the transaction or information comes to light that contradicts material information provided in the notice by the parties.

Figure 2: Process for Reviewing Transactions Notified to the Committee on Foreign Investment in the United States (CFIUS)



Source: GAO analysis of agency documents. | GAO-18-249

^aCFIUS may identify for the parties information that, even though not required for acceptance of the notice, may facilitate CFIUS's review and which the parties may want to compile before the review begins. The questions that CFIUS poses to the parties during the pre-notice consultation sometimes give parties an indication of the national security issues that CFIUS may consider with respect to the transaction during the course of the review.

^bAccording to Treasury officials, parties may withdraw and resubmit their notice at any point in the process to allow more time to engage with CFIUS to resolve national security concerns identified by the committee. Parties may also withdraw and subsequently choose to abandon the transaction.

Pre-Notice Consultation

Before a transaction is reviewed by CFIUS, Treasury may conduct a pre-notice consultation with parties to a notified transaction. Upon request, Treasury and other agencies meet with the parties, provide informal guidance on the CFIUS review process, and may review early drafts of the notice.

Once the parties have developed the final draft, they submit it to the committee for review. When Treasury, with input from member agencies, determines that the notice of the transaction is complete, the official CFIUS review of the transaction commences.

National Security Review

CFIUS conducts a national security review of each notified transaction, which includes determining whether it is a covered transaction and developing a national security threat assessment. The national security review lasts up to 30 days and begins the day after Treasury determines the filing is complete and circulates the filing to CFIUS member agencies. At the beginning of the national security review, CFIUS identifies co-lead agencies. According to Treasury officials, typically within the first 10 to 12 days of the national security review, CFIUS develops a “covered transaction analysis,” which determines whether the transaction is a covered transaction according to FINSA.¹⁵ According to Treasury officials, there typically is consensus among voting members on whether the transaction is a covered transaction.¹⁶ During the national security review, CFIUS also assesses whether there is credible evidence that the foreign party in control of that U.S. business might take action to impair the national security of the United States¹⁷ as well as whether the covered

¹⁵As part of this analysis, CFIUS examines whether the transaction could result in foreign control of a U.S. business.

¹⁶Treasury officials stated that if consensus cannot be reached by members of the committee as to whether the transaction is a “covered transaction” as defined by FINSA, the case will be reviewed by senior-level officials at each of the member agencies until consensus is reached. CFIUS may also end its review if it is determined that the notified transaction is not a covered transaction. According to Treasury officials, CFIUS does not “clear” a transaction that is “not covered” and a certification to Congress is not required in such instances.

¹⁷31 C.F.R. § 800.501(a)(2).

transaction is a foreign government-controlled transaction.¹⁸ Concurrently, ODNI develops a national security threat assessment, with input and support from the intelligence community, to be completed during the first 20 days of the national security review.¹⁹

If CFIUS finds that the covered transaction does not present national security risks or that other provisions of law provide adequate and appropriate authority to address the risks, CFIUS may end its review. If CFIUS chooses to conclude its review at this point, CFIUS is to advise the parties in writing that the transaction has been cleared and allowed to proceed. According to information provided by Treasury, CFIUS has historically concluded action on the majority of transactions during or at the end of the 30-day national security review. The committee's determination must be certified to specified members of Congress after the review is completed.²⁰ However, if at the end of the national security review, CFIUS has not yet determined that there are no unresolved national security concerns and the committee requires additional time, CFIUS may proceed to a national security investigation, which must be completed within 45 days.²¹

National Security Investigation

If, during the 45-day national security investigation, CFIUS identifies an unresolved national security concern, it works with the parties to mitigate, if appropriate, any national security risks that may exist. If an agency identifies an unresolved national security concern, the agency develops an analysis of the potential risks posed by the covered transaction and includes recommendation for action, such as mitigation measures or

¹⁸According to FINSA, the term "foreign government-controlled transaction" means any covered transaction that could result in the control of any person engaged in interstate commerce in the United States by a foreign government or an entity controlled by or acting on behalf of a foreign government. 50 U.S.C. § 4565(a)(4).

¹⁹50 U.S.C. § 4565(b)(4).

²⁰50 U.S.C. § 4565(b)(3)(A). According to Treasury officials, the Assistant Secretary of the Treasury and the co-lead agency certify that there are no unresolved national security concerns.

²¹Additionally, transactions that are foreign government-controlled or that would result in control by a foreign person of critical infrastructure of or within the United States move automatically to a national security investigation unless, at the lead agency Secretary- or Deputy Secretary-level, CFIUS concludes that the transaction will not impair U.S. national security. 50 U.S.C. § 4565(b)(2)(B) and (D).

referral to the President, and shares this analysis with other members of the committee. Mitigation measures may include ensuring that only authorized persons have access to certain technologies, information, or facilities, or providing the U.S. government the right to review certain business decisions and to object if the decisions raise national security concerns.²² According to Treasury officials, CFIUS member agencies aim for mitigation that would be effective, can be monitored, and would be enforceable. If there is a difference of opinion among CFIUS member agencies about the level or type of mitigation that should be utilized, CFIUS agencies discuss the matters to reach consensus.²³

In some cases, parties may choose to withdraw and resubmit the notice.²⁴ If CFIUS has determined that national security concerns cannot be mitigated, according to Treasury officials, CFIUS typically advises the parties that the committee will refer the matter to the President for decision. According to Treasury officials, parties have the opportunity to withdraw and resubmit the notice if they need additional time to discuss CFIUS's concerns or to present additional information or mitigation proposals for CFIUS's consideration.²⁵ Sometimes parties choose to withdraw and abandon the transaction if, for instance, CFIUS proposes mitigation measures that the parties choose not to accept. Parties may also abandon the transaction for commercial reasons unrelated to the CFIUS review. If parties choose to withdraw and resubmit a transaction, the national security review begins again, and the committee has another 75 days to complete the review of the transaction.

If CFIUS obtains consensus from committee members that there are no unresolved national security concerns or the national security concerns have been mitigated, the national security investigation ends, and the

²²For example, in at least one instance, CFIUS member agency officials reported that they have imposed a requirement that, under certain circumstances, a third party be allowed to monitor electronic communication between the parties to the covered transaction to ensure that the communication does not pose a risk to national security.

²³Treasury designates agencies as co-leads for mitigation, which are responsible for monitoring any mitigation measures. Co-leads for mitigation typically are the agencies that served as co-lead agencies for purposes of the review and investigation.

²⁴Parties may choose to withdraw their notice at any point prior to the conclusion of the CFIUS review process. 31 C.F.R. § 800.507.

²⁵Treasury must, as appropriate, establish a process to track any actions that may be taken by any party to the transaction, in connection with the transaction, before the notice is resubmitted. 50 U.S.C. § 4565(l)(2)(A)(iii).

covered transaction receives safe harbor. Treasury and the co-lead agency send written certification to specified members of Congress that there are no unresolved national security concerns.²⁶ However, if the committee concludes that a proposed foreign investment threatens to impair the U.S. national security and the threat cannot be mitigated, CFIUS will elevate the notice to the President for determination and CFIUS may recommend that the President suspend or prohibit the transaction.²⁷ According to Treasury officials, parties may also withdraw their notice at this point rather than have the President decide whether to block the transaction.

Presidential Action

If, at the end of the national security investigation, CFIUS elevates a transaction to the President for determination, the President has 15 days from the completed investigation to decide to prohibit or suspend the acquisition, or to take no action.²⁸ Only four transactions reviewed by

²⁶The Secretary or Deputy Secretary of the Treasury and the secretary or deputy secretary of the co-lead agency certify to specified members of Congress that there are no unresolved national security concerns. For a list of the members of Congress, see 50 U.S.C. § 4564(b)(3)(C)(iii).

²⁷CFIUS may choose not to mitigate national security concerns or to not refer a transaction to the President for determination if another U.S. law, separate from section 721 as amended by FINSA and the International Emergency Economic Powers Act, provides adequate and appropriate authority to protect the national security of the United States. According to Treasury officials, examples of U.S. laws that may cause CFIUS to not take action include export controls such as the International Traffic in Arms Regulations and Export Administration Regulations.

²⁸50 U.S.C. § 4565(d). Presidential authority to suspend or prohibit a covered transaction only applies when the President determines, among other things, that no law, other than section 721 of the Defense Production Act of 1950 and the International Emergency Economic Powers Act, provides adequate and appropriate authority to protect the national security of the United States.

CFIUS have been the subject of a presidential prohibition since the committee was established in 1975.²⁹

Stakeholders Have Concerns about the Increased CFIUS Workload but Treasury Has Not Coordinated Staffing Level Assessments

CFIUS has experienced an increase in workload in recent years, but Treasury, as CFIUS lead, has not coordinated member agency efforts to better understand staffing levels needed to complete core committee functions. According to CFIUS member agency officials, the volume of transactions notified to the committee and the complexity of CFIUS reviews in terms of technology, transaction structure, and national security concerns have increased substantially from 2011 through 2016, while CFIUS staffing levels have experienced a modest increase during the same time period. Member agency officials stated that CFIUS is able to review all transactions that have been voluntarily notified to the committee. However, many stakeholders, including most member agency officials and several external experts, expressed concerns that CFIUS member agencies were limited in their ability to complete other CFIUS functions, such as identifying non-notified transactions. In addition, agency officials were unsure if they would have sufficient staff if the CFIUS workload were to continue to increase. *Standards for Internal Control in the Federal Government* states that management should establish the organizational structure necessary to achieve its objectives and periodically evaluate this structure. Treasury has not coordinated member agency efforts to better understand the staffing levels needed to complete the current and future workload associated with core functions of the committee.

²⁹Most recently, in September 2017, the President issued an order prohibiting the \$1.3 billion dollar acquisition of Lattice Semiconductor Corporation, a U.S. firm, by purchasers including Canyon Bridge Fund I, LP, a U.S.-based firm with links to a Chinese corporation. According to SEC filings, the parties to this transaction had withdrawn and refiled with CFIUS multiple times. Ultimately, according to the executive order announcing the decision, the President blocked the transaction due to the finding of credible evidence that the purchasers might, in exercising control of the acquired company, take action that threatened to impair the national security of the United States. 82 Fed. Reg. 43,665 (Sept. 18, 2017). When referencing any specific transactions that may have been reviewed by CFIUS, we relied on publicly available information that we identified and was not derived from information filed with CFIUS.

The Volume of Covered Transactions CFIUS Reviewed Increased between 2011 and 2016

Despite figures decreasing in one year, overall, the number of covered transactions that CFIUS reported it reviewed increased from 111 transactions in 2011 to 172 transactions in 2016, or almost 55 percent (see table 1).³⁰ In 2017, CFIUS reviewed 238 transactions, according to Treasury officials.³¹ According to member agency officials, the increased volume of covered transactions resulted in increased work for all CFIUS members, no matter which agency is the co-lead, because each member agency must review each transaction notified to the committee.

Table 1: Covered Transactions Reviewed by the Committee on Foreign Investment in the United States (CFIUS), 2011-2016

Year	Covered Transactions Reviewed	Transactions That Proceeded to National Security Investigations	Transactions Withdrawn after Submission ^c	Transactions Resulting in Use of Mitigation Measures
2011	111	40	6	8
2012	114 ^b	45	22	8
2013	97	48	8	11
2014 ^a	147	51	12	9
2015 ^a	143	66	13	11
2016	172 ^b	79	27	17

Source: *Annual Report to Congress*. Committee on Foreign Investment in the United States, 2015. | GAO-18-249

^aIn both 2014 and 2015, CFIUS rejected one notice because the parties did not satisfy requirements in the regulations or because a material change to the transaction or information came to light that contradicted material information the parties provided in the notice.

^bOf the covered transactions reviewed, the President blocked one transaction in 2012 and another in 2016.

^cThe statistic for transactions withdrawn may include transactions that have been withdrawn and resubmitted to the committee, transactions withdrawn for commercial reasons, and transactions withdrawn due to national security concerns raised by CFIUS. For example, according to information provided by Treasury, the number of transactions withdrawn and abandoned in light of CFIUS-related national security concerns was two in 2014, three in 2015, and five in 2016.

³⁰According to one Treasury official, transactions that parties notified to CFIUS but were ultimately determined not to be covered transactions are not included in the number of covered transactions reviewed by CFIUS. Additionally, transactions for which parties participated in pre-notice consultation but ultimately did not file a notice with CFIUS also are not included.

³¹According to Treasury officials, this reflects the number of notices for which CFIUS initiated a review and could include transactions that CFIUS determined to be “not covered.”

The number of reported covered transactions requiring national security investigations almost doubled during this same period, increasing from 40 transactions in 2011 to 79 transactions in 2016. Treasury officials told us that they estimated that the total number of transactions that proceeded to national security investigations was greater in 2017 than it was in 2016.³² They said that the increase in the number of covered transactions that require a national security investigation is another indication that the committee's workload has increased. One Treasury official noted that the number of times that parties withdraw and resubmit transactions can increase the workload of the committee as it must review the transaction each time it is submitted.

Additionally, the number of reported covered transactions that include mitigation measures has increased. Each year, CFIUS places mitigation measures on a relatively small number of covered transactions. For example, according to Treasury officials, 18 (roughly 10 percent) of 172 transactions the committee reviewed in 2016 resulted in mitigation measures. According to member agency officials, mitigation measures rarely expire; thus, the number of these measures increases over time, as does the accompanying workload for co-lead agencies tasked with overseeing the measures.

The Increased Complexity of CFIUS Reviews Has Increased CFIUS Workload

Officials from CFIUS member agencies stated that the complexity of CFIUS reviews in terms of technology, transaction structure, and national security concerns has increased in recent years. They said that additional time and staff have been required to address this rise in complexity and to complete these reviews. For instance, one member agency official told us that reviews of transactions from parties whose companies use new and emerging technologies, such as artificial intelligence and robotics, typically require input from agency subject matter experts to help the committee understand how, if at all, the acquisition of these technologies by foreign parties could create national security concerns.

According to member agency officials, the amount of time and number of staff needed to review a transaction can fluctuate greatly based on, among other things, the technology involved. One agency official said that 6 of their employees, on average, are involved in reviewing a less complex transaction, but up to 15 employees may be necessary to

³²As of January 2018, data for 2017 had not yet been finalized by Treasury.

complete the review if the technology involved is more complicated. The number of agency staff involved can increase further if senior level management is required to participate in the review. This official also stated that most of the transactions reviewed in the past were from sectors that agency officials were familiar with and involved more predictable issues, but recently, transactions more frequently involved complex technology, which required additional expertise. Officials from another member agency stated that a majority of their staff involved in reviewing transactions do not have CFIUS as a primary duty and that their agency has reallocated resources to address the increased case load. One Treasury official stated that one case was so complex that it required one staff member to dedicate all of their time to its review, and the other responsibilities of this employee had to be shifted to other members of the staff.

Additionally, according to member agency officials, reviews of transactions involving technologies the government frequently uses have increased, requiring additional time and staff to understand how this technology affects various agencies. For instance, member agency officials said that reviewing transactions involving semiconductors, which are commonly used in an array of products used by the government, typically requires additional time and staff because CFIUS member agencies must understand, among other things, how the approval of a transaction could affect systems across government agencies.

According to CFIUS member agency officials, the structures of the transactions the committee reviews have also become more complex, requiring more time and staff to assess. For example, business arrangements—such as complex corporate arrangements, joint ventures, loan arrangements, nondisclosure agreements, and memoranda of understanding—may require the work of additional staff. Treasury officials also stated that these arrangements can make it more difficult to determine whether the transaction is covered by CFIUS authorities, as there may be commercial relationships that affect the parties' decision-making. According to Treasury officials, such arrangements can also increase the complexity of the national security review, as they may create additional "indirect threats" that must also be analyzed.

Member agency officials explained that it has become more challenging to identify the ultimate beneficial owners—the persons who ultimately own and control a company—due to the structure of the transaction. According to Treasury officials, in certain countries, it can be difficult to distinguish between control by a private entity and control by a state entity due to the

various relationships created by the transaction structure. In these cases, CFIUS often requires additional information from the parties in such transactions before the national security review can begin. Member agency officials stated that they had been encountering these arrangements more frequently, and additional time and staff had been required to examine the national security implications of these transactions.

Finally, the nature of the national security concerns the committee considers has expanded beyond the traditional threats, requiring more time and staff to assess them, according to member agency officials. National security concerns include traditional ones, such as threats to U.S. critical infrastructure. Emerging concerns include the possibility of a foreign entity obtaining access to personally identifiable information that, if disclosed, could be exploited for purposes that have national security consequences or the proximity of property to areas considered sensitive by the U.S. government.³³

Treasury Has Not Coordinated Assessments of Staffing Levels Needed to Complete CFIUS Core Functions

According to agency officials, the number of staff assigned to CFIUS activities has not kept pace with the increase in covered transactions reviewed by CFIUS. According to one Treasury official, the more an agency is required to act as co-lead, the more time and staff are needed of the agency. After Treasury, which acts as co-lead on every review, the Departments of Defense (DOD), Energy (DOE), and Homeland Security (DHS) acted as co-lead on the largest number of CFIUS reviews in 2016 (see table 2).

³³The Department of Defense has been concerned about the potential for foreign entities to obtain property near areas the U.S. government considers sensitive, as we discussed in our December 2014 and April 2016 reports. GAO, *Defense Infrastructure: Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges*, [GAO-15-149](#) (Washington, D.C.: Dec. 16, 2014). GAO, *Defense Infrastructure: DOD Has Made Limited Progress in Assessing Foreign Encroachment Risks on Federally Managed Land*, [GAO-16-381R](#) (Washington, D.C.: Apr. 13, 2016).

Table 2: Number of Instances CFIUS Member Agencies Acted as Co-lead in 2016.

Agency^a	Number of Instances Agencies Acted as Co-lead in 2016^b
Department of the Treasury (Chair)	172
Department of Defense	71
Department of Energy	39
Department of Homeland Security	32
Department of Commerce	22
Department of Justice	15
Department of State	2
Office of the United States Trade Representative	0
Office of Science and Technology Policy	0

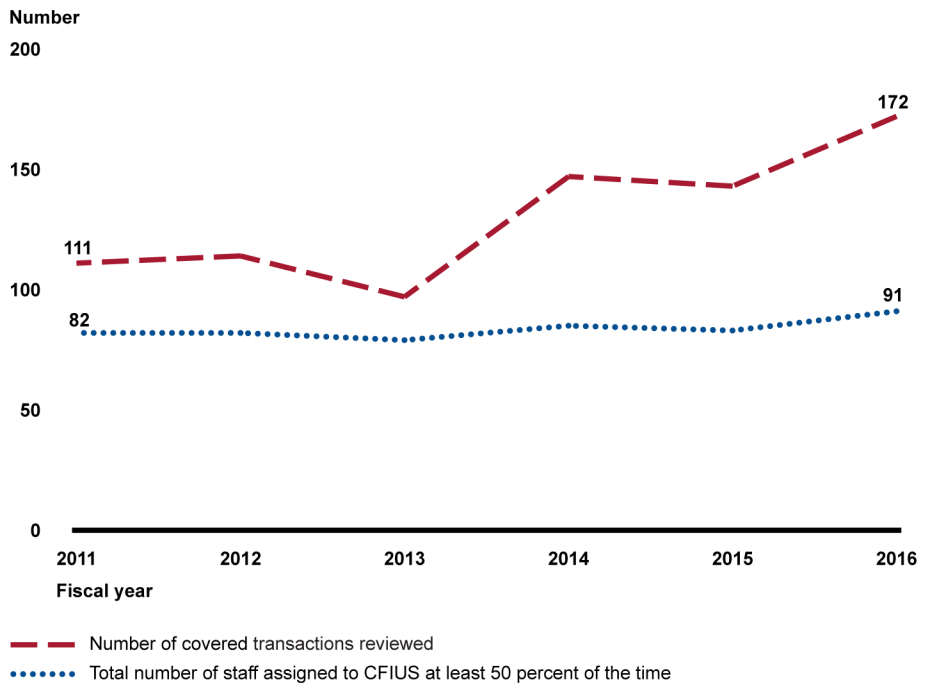
Source: GAO presentation of information reported by agencies. | GAO-18-249

^aAlthough not a member agency, USDA acted as a co-lead for 3 cases in 2016.

^bTreasury is co-lead on every CFIUS notice. The number of instances other member agencies act as co-lead may not add up to the total number led by Treasury because multiple agencies could act as co-lead for any one notice. The number of instances agencies acted as a co-lead are for calendar year 2016.

According to information provided by member agency officials, CFIUS saw a modest increase in staff assigned to CFIUS activities since 2011, with Treasury, DOD, DOE, DHS, and State adding a few staff, while staffing levels did not rise at the other member agencies. The total number of staff assigned to CFIUS activities increased from 82 in 2011 to 91 in 2016, an increase of 11 percent. During that same period, covered transactions reviewed by CFIUS increased from 111 transactions in 2011 to 172 transactions in 2016, an increase of almost 55 percent (see fig. 3).

Figure 3: Total Number of CFIUS Member Agency Staff Assigned to CFIUS Activities, Compared to the Number of Covered Transactions Reviewed, 2011-2016



Source: GAO analysis of Treasury-reported CFIUS cases and agency-reported staffing levels. | GAO-18-249

Member agency officials stated that the number of staff assigned to work on CFIUS activities may fluctuate throughout the year based on the committee’s work. For example, as previously discussed, CFIUS member agencies may rely on experts with other responsibilities throughout each agency to provide assistance with the review as the need arises. For instance, in fiscal year 2016, DOE had four staff dedicated to CFIUS, but one DOE official said he reaches out to relevant subject matter experts, who have other responsibilities, to provide input on transactions within their area of expertise.

Treasury officials stated that staff have been able to review the number of transactions that have been voluntarily notified to CFIUS to date. One Treasury official said that, despite the increase in the number of transactions reviewed by CFIUS, the committee has almost always provided a determination to the parties within the timeframes required as

to whether the covered transaction should be allowed to proceed or blocked by the President.³⁴ Further, Treasury officials stated that despite staff constraints, CFIUS has, as needed, appropriately mitigated the national security concerns for the transactions the committee has approved.

However, several member agency officials and external experts expressed concerns that, due to staff constraints, CFIUS member agencies were limited in their ability to complete other CFIUS functions, such as monitoring mitigation measures and identifying non-notified transactions. First, the time and staff necessary to monitor mitigation measures varies. For instance, according to one member agency official, some mitigation measures require daily monitoring from officials, while other mitigation measures require only the review of an annual report submitted by parties to the transaction. Several member agency officials acknowledged that they have fewer staff than they would like to devote to monitoring mitigation measures.

Second, these member agency officials also said that they are not able to devote the amount of time they would like to the task of identifying non-notified transactions. CFIUS member agencies review data on mergers and acquisitions to identify non-notified transactions of concern, those that have not been notified to CFIUS for review. In recent years, according to agency officials, CFIUS has seen an increase in the number of non-notified transactions CFIUS could potentially review.³⁵ One official indicated that in 2016, their agency examined 2,683 potential non-notified transactions, an increase of roughly 38 percent from 2014. Member agency officials stated that because non-notified transactions are frequently reviewed after the acquisition has been completed, the process of mitigating potential national security concerns of non-notified transactions can be difficult.³⁶ Several member agency officials suggested that they would like to devote more time to examining non-notified

³⁴According to one Treasury official, this includes those transactions where the parties withdraw and refile to gain more time to address the committee's concerns, which restarts the 75-day CFIUS review.

³⁵Treasury officials were unable to identify the overall number of non-notified transactions that have been filed with CFIUS. Member agency officials stated that the non-notified transactions identified sometimes end up voluntarily filing with CFIUS, thus these transactions are not categorized as non-notified transactions in CFIUS data.

³⁶According to member agency officials, non-notified transactions are often identified using public data sources and most transactions have already been completed by the time they are reported publicly.

transactions, but staff constraints limit the amount of time agencies can spend conducting this task.

Several member agency officials said that they do not know if current staffing levels would be able to address a further increase in CFIUS workload. Treasury officials noted that the volume of transactions reviewed by CFIUS will likely continue to increase. Moreover, congressional bills have been introduced that, if enacted, would alter the CFIUS process. As discussed later in this report, agency officials stated that some of these potential changes would likely further increase CFIUS workload. According to several CFIUS member agency officials, if the CFIUS workload were to increase, additional staff would likely be necessary to complete committee functions, such as identifying non-notified transactions and monitoring mitigation measures. Officials from two member agencies also expressed concerns about their ability to review transactions that have been notified to the committee if the volume of CFIUS notices increased.

According to Treasury officials, CFIUS does not have a centralized budget, and Treasury does not have authority to determine CFIUS staffing levels at committee member agencies. Treasury officials stated that they have taken steps, in coordination with the Office of Management and Budget (OMB), to collect data from the member agencies on current staffing levels expended on CFIUS core functions but have not established timeframes for this data collection. *Standards for Internal Control in the Federal Government* states that management should establish the organizational structure necessary to achieve its objectives and periodically evaluate this structure. Treasury officials stated that they have conducted an assessment of Treasury's staffing needs and have encouraged other agencies to do the same. However, Treasury, as CFIUS lead, has not coordinated member agencies' efforts to better understand the staffing levels needed to address the current and future CFIUS workload associated with core committee functions, such as identifying and reviewing non-notified transactions. Without this information, CFIUS may be limited in its ability to fulfill its objectives and address threats to the national security of the United States.

CFIUS Member Agencies and External Experts Provided Views on Benefits and Drawbacks of Possible Changes to CFIUS

Officials from CFIUS member agencies (voting and nonvoting) and selected nonmember participant agencies, as well as external experts, expressed a range of views on the potential benefits and drawbacks to possible changes to CFIUS. In our interviews with them, these stakeholders discussed a variety of possible changes to CFIUS that we organized into three categories: (1) altering the structure of CFIUS, (2) redefining which merger and acquisition transactions should be considered for CFIUS review, and (3) expanding the list of factors CFIUS considers as it evaluates the impacts of a foreign transaction on national security.³⁷ For the most part, CFIUS member agencies and nonmember participant agencies stated that the existing structure is working effectively and described drawbacks to potential changes, such as changing membership or voting rights. Perspectives among agency officials and external experts varied on the potential effects of redefining which transactions should be considered for review, such as requiring CFIUS to review all covered transactions. Agency officials and external experts described a range of potential effects of expanding the list of factors CFIUS considers. They generally stated that including a net economic benefit test in the review, for example, would not be beneficial. Many officials and external experts agreed that one potential drawback of many of the possible changes is a likely increase to the CFIUS workload, generating concerns about the committee's capacity to complete its core functions.

Agencies Participating in CFIUS Were Generally Satisfied with the Structure of the Committee

In general, officials from member and nonmember agencies participating in CFIUS were satisfied with the structure of the committee. Possible changes, which would affect the way CFIUS is organized and does its work, include changes to the chairmanship of CFIUS, changes to the voting membership of CFIUS (adding new voting members and giving voting rights to current nonvoting members), and changes to the timeframes under which CFIUS works. However, for the most part, CFIUS member agencies and nonmember participant agencies reported that the existing structure works effectively. See tables 3, 4, 5, and 6 for details on the perspectives expressed on these changes.

³⁷See appendix III for the list of factors CFIUS currently considers.

Table 3: Perspectives Expressed Regarding Possible Changes to the Chairmanship of CFIUS

Possible change: Change chairmanship of CFIUS from Treasury to an agency with a greater national security focus

Bottom line: CFIUS member agencies told us they are generally content with Treasury’s leadership of the committee.

In Favor	Against
A few external experts suggested that replacing Treasury as chair with one of the national security agencies might help strengthen CFIUS’s national security focus or its ability to monitor and enforce mitigation measures.	<p>Most voting member agency officials told us that they were in favor of keeping Treasury as the chair of CFIUS. (Officials from four member agencies did not respond to this question.)</p> <p>A few member agency officials told us that other agencies do not have the financial expertise and balance of economic and national security responsibilities that make Treasury well suited to assessing whether a particular transaction is covered under CFIUS authorities.</p> <p>A few agency officials and one external expert stated that such a change would likely require significant restructuring by the affected agencies with limited effect on outcomes.</p>

Legend:

CFIUS Committee on Foreign Investment in the United States
 Treasury Department of the Treasury

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Table 4: Perspectives Expressed Regarding Possible Addition of New Voting Members

Possible change: Add new voting members to CFIUS, such as USDA, FCC, FBI, or HHS

Bottom line: Nonmember agencies we spoke with generally see their current participation in CFIUS as appropriate to address their issues.

In Favor	Against
<p>One nonmember agency official and a couple of external experts suggested new members could potentially provide the committee with more consistent access to expertise on issues such as food security, biopharma, or telecommunications.</p> <p>HHS officials stated they would be in favor of becoming a CFIUS member to identify and mitigate national security risks more effectively within their areas of expertise.</p>	<p>According to officials at most member agencies, Treasury generally identifies notices that require expertise beyond the member agencies and reaches out to other agencies as needed.</p> <p>Officials from three nonmember agencies—FBI, FCC, and USDA—told us they were satisfied with their current involvement in CFIUS. FBI specifically noted that they participate in nearly every meeting as part of the Department of Justice.</p> <p>Officials from three nonmember agencies—FCC, USDA, and HHS—said they currently devote relatively little time to CFIUS activities and are only called upon to review the small number of transactions for which they have expertise. Officials from two of these agencies additionally noted that making them voting members of CFIUS would entail a substantial increase in their workload, largely reviewing transactions that are unrelated to their areas of expertise. For example, USDA told us that from 2013 to 2016 they participated in roughly 25 reviews out of a total CFIUS caseload of around 550.</p>

Legend:

CFIUS Committee on Foreign Investment in the United States
 FBI Federal Bureau of Investigation
 FCC Federal Communications Commission
 HHS Department of Health and Human Services
 USDA Department of Agriculture

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Table 5: Perspectives Expressed Regarding Possible Extension of Voting Rights to *Ex Officio* Members

Possible change: Grant voting rights to *ex officio* members—ODNI and DOL

Bottom line: *Ex officio* CFIUS members do not see a need for a voting role.

In Favor	Against
A few external experts suggested that giving a vote to ODNI, with its responsibility for intelligence and security, could help strengthen CFIUS's national security focus.	Officials from ODNI and a few other agencies we spoke with stated that ODNI's role as the impartial developer of the national security threat assessment is important. One official told us that ODNI having a vote on the committee could call into question whether its assessments remained impartial and objective. A few external experts noted that this could be seen as prescribing policy, which they said is not the role of intelligence agencies. DOL officials described limited involvement in CFIUS as an <i>ex officio</i> member and stated they did not believe that additional involvement on their part is merited. They told us that, since 2015, they reviewed 2 cases, of a total CFIUS caseload of over 300.

Legend:

CFIUS Committee on Foreign Investment in the United States
ODNI Office of the Director of National Intelligence
DOL Department of Labor

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Table 6: Perspectives Expressed Regarding Extension of CFIUS Timeframes

Possible change: Extend timeframes beyond the current 30 days for review and the 45 days for investigation, if necessary	
Bottom line: Most member agency officials stated that CFIUS almost always completes its reviews within current timeframes and that the option to withdraw and refile provides flexibility. They stated additional time could benefit a small number of reviews, but this would need to be balanced against costs to government and industry.	
In Favor	Against
<p>A few external experts stated that CFIUS could benefit from additional time to develop a thorough understanding of complex issues associated with a given transaction or to obtain additional information from parties in the timeframes provided. They also stated that current timeframes may be insufficient to develop effective mitigation measures.</p> <p>A few external experts suggested that a tiered system—allowing more time for complex transactions—might alleviate the pressures for parties to withdraw their transaction and resubmit it with additional information requested by CFIUS.</p> <p>A few external experts suggested that allowing CFIUS to pause the timeline to request additional information from the companies might alleviate the time pressures of these requests, creating less uncertainty about the timeframes for the business community than the current withdraw and resubmit process.^a</p>	<p>Officials from most member agencies stated that they are almost always able to complete most reviews within the current timeframes, although a few acknowledged that a small number require additional time because of, for example, insufficient information provided by the company or the complexity of the issue reviewed.</p> <p>A few agency officials and external experts stated that the business community prefers the clarity of an explicit timeline because of the costs of additional delays and would prefer to have the review completed more quickly.</p>

Legend:

CFIUS Committee on Foreign Investment in the United States

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

^aAccording to the CFIUS annual report, in 2015, out of 143 transactions, 13 (9 percent) withdrew their transaction after filing. Nine of these withdrawn transactions were subsequently refiled and fully reviewed by CFIUS, while the other 4 were abandoned.

Perspectives Varied on the Effects of Changes to the Types of Transactions to Be Considered for CFIUS Review

Member agency officials and external experts offered a range of views about the effects of changes to the types of transactions reviewed by CFIUS. Possible changes, which would affect which merger and acquisition transactions would be considered for CFIUS review, include changes to the definition of a covered transaction and changing the voluntary notification process to make review of all or some covered transactions mandatory. Stakeholders we spoke with identified benefits and drawbacks to each of these changes. Many stakeholders agreed that one potential drawback of these possible changes is a likely increase to the CFIUS workload. See tables 7, 8, and 9 for details on the perspectives expressed.

Table 7: Perspectives Expressed Regarding Expansion of the Definition of a Covered Transaction

Possible change: Expand the statutory definition of a covered transaction to include foreign transactions not considered acquisitions of an existing U.S. company, such as the creation of a new business in the United States

Bottom line: A few member agency officials and external experts said that more clearly including the creation of new businesses and joint ventures could improve CFIUS coverage, but others stated that CFIUS has used existing flexibilities to address these concerns in the past.

In Favor	Against
<p>According to a few member agency officials and external experts, some types of foreign investment in the United States are not clearly included under the definition of a covered transaction, such as certain types of joint ventures and the creation of new businesses, and may present national security concerns, such as the proximity of a new business to sensitive locations.^a One external expert noted a lack of data about trends on these types of investments, raising concerns that CFIUS would not review these transactions for national security risks without expanding the definition of a covered transaction. By explicitly including these transactions, CFIUS could be more likely to review possible risks associated with them.</p>	<p>A few member agency officials and experts stated that CFIUS has sufficient authority to examine some of these types of investments. For example, a few external experts stated that, in the past, CFIUS had been able to review transactions of interest, even though they were newly created businesses, rather than an acquisition of an existing business.</p> <p>One external expert noted that, in some cases, joint ventures not covered by CFIUS could be reviewed elsewhere in the government under export control authorities, because of concerns about technology transfer to a foreign party.</p> <p>One member agency official and a couple of external experts expressed concern that this would substantially increase the CFIUS workload.</p>

Legend:

CFIUS Committee on Foreign Investment in the United States

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

^aThe Department of Defense has been concerned about the potential for foreign entities to obtain property near areas the U.S. government considers sensitive, as we discussed in our December 2014 and April 2016 reports. GAO, *Defense Infrastructure: Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges*, [GAO-15-149](#) (Washington, D.C.: Dec. 16, 2014). GAO, *Defense Infrastructure: DOD Has Made Limited Progress in Assessing Foreign Encroachment Risks on Federally Managed Land*, [GAO-16-381R](#) (Washington, D.C.: Apr. 13, 2016).

Table 8: Perspectives Expressed Regarding Mandatory CFIUS Review of All Covered Transactions

Possible change: Make CFIUS review of all covered transactions mandatory

Bottom line: According to a few member agency officials, mandatory review of all covered transactions could limit their ability to identify and focus on those transactions that genuinely require the committee's attention and would represent a substantial increase in workload.

In Favor

A few external experts stated that requiring all covered transactions to file with CFIUS could reduce the chance that national security risks are being missed due to companies not voluntarily filing with CFIUS and not being identified through CFIUS non-notified transaction reviews. A few external experts suggested that a modest filing fee, such as that used by the Federal Trade Commission for proposed mergers, could be used to alleviate resource constraints.

Against

Officials from a few member agencies noted that a requirement to review all transactions would limit their ability to identify and focus on those transactions that genuinely require the committee's attention. Officials from one member agency stated that CFIUS's current ability to initiate reviews provides incentive for companies to notify CFIUS about their transactions. Officials from most member agencies told us that they believed that they could not manage such a substantial increase in transactions filed with CFIUS given current staffing levels. A few external experts suggested that, rather than mandatory filing of a formal notice for all covered transactions, mandatory registration, such as that used by the Securities and Exchange Commission, would create a listing of all covered transactions to facilitate non-notified review while imposing limited additional burdens on CFIUS or the business community.

Legend:

CFIUS Committee on Foreign Investment in the United States

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Table 9: Perspectives Expressed Regarding Mandatory CFIUS Review of Selected Subsets of Covered Transactions

Possible change: Make review of selected subsets of covered transactions, such as those from a particular country or in a particular sector, mandatory

Bottom line: A few member agency officials stated that their risk analyses already consider these factors and making filing mandatory for selected subsets of foreign mergers and acquisitions would represent an increase in workload.

In Favor	Against
<p>Officials from a few member agencies and a few external experts stated that focusing on factors such as country of origin or industry sector could provide greater attention to key areas of concern. While resulting in an increase in workload, this approach would result in less of an increase than would mandatory filing of all transactions.</p>	<p>Officials from a few member agencies, as well as one external expert, expressed concern that if there were a list of sectors or countries for which filing would be mandatory, that list could quickly become outdated as circumstances change. Problems identified with such a list include the time and resources needed to update it.</p> <p>One external expert stated that the creation of a formal list of countries to receive particular attention could risk violating a bilateral or multilateral trade or investment agreement.</p> <p>Officials from a few member agencies stated that their risk analyses already consider these factors when determining whether to review a non-notified transaction.</p> <p>A few external experts stated that CFIUS already evaluates risks of foreign control and that focusing on state-owned enterprises would be of limited benefit.</p>

Legend:

CFIUS Committee on Foreign Investment in the United States

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Most Stakeholders Were Satisfied with the Factors CFIUS Currently Considers in Reviewing Foreign Transactions

Member agency officials and external experts were generally satisfied with the list of factors CFIUS currently considers when it reviews foreign transactions and offered a variety of opinions on the effects of changes to them. Possible changes include expanding the statutory national security factors to be considered and introducing an economic impact assessment. Stakeholders we spoke with identified benefits and drawbacks to each of these changes. See tables 10 and 11 for details on the perspectives expressed.

Table 10: Perspectives Expressed Regarding Expansion of the National Security Factors CFIUS Should Consider

Possible change: Expand the statutory national security factors for CFIUS to consider as part of its reviews to explicitly include additional factors, such as food security, personally identifiable information, or soft power

Bottom line: Most member agency officials stated that CFIUS’s existing national security factors provide flexibility to allow it to pursue reviews on a range of topics.

In Favor	Against
<p>Officials from one member agency and a couple of external experts raised concerns that CFIUS may overlook new risks that are not clearly identified by the illustrative factors for consideration delineated in FINSA.</p>	<p>Most member agency officials and a few external experts stated that the lack of specificity in the statute allows CFIUS the flexibility to pursue reviews more easily as national security risks change than a more formal and precise definition would allow. One external expert expressed concerns that a less flexible and more precise approach would be too restrictive and could result in parties actively trying to circumvent CFIUS review.</p> <p>Most member agency officials stated that member agencies reach out to agency subject matter experts and nonmember agencies with the expertise to assess these new or changing threats when conducting their reviews. According to a few external experts, CFIUS has covered cases on these new and changing threats in recent instances.</p> <p>A few external experts expressed concerns that proposals to add certain national security factors to the CFIUS statute were more about economic reciprocity than national security, and could be better dealt with through other trade authorities. For example, a few external experts held differing views on whether food security issues were a legitimate national security issue or an economic issue.</p>

Legend:

CFIUS Committee on Foreign Investment in the United States
 FINSA Foreign Investment and National Security Act of 2007

Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Table 11: Perspectives Expressed Regarding the Addition of a Net Economic Benefit Test to CFIUS Review

Possible change: Include a net economic benefit test as part of the CFIUS review

Bottom line: According to most officials and a few external experts, implementing a net economic benefit test would require substantial changes to the existing staff, resources, and processes for CFIUS, and might detract from its ability to address national security concerns.

In Favor	Against
A few external experts suggested that some observers believe that a net economic benefit test could enable the United States to assess the economic value of a given transaction, beyond the scope of questions of national security.	<p>Officials from most CFIUS member agencies stated that staff currently working on CFIUS are focused on assessing and mitigating national security risks. A few officials said that additional economists and labor and industrial experts would likely be necessary to assess the net economic benefit of a potential transaction.</p> <p>A few member agency officials stated that adding a net economic benefit test would weaken the existing focus on national security. They suggested that CFIUS may not be the appropriate entity to conduct such an analysis.</p> <p>One external expert stated that businesses understand and respect the need to mitigate national security concerns, but may be less likely to willingly subject themselves to an evaluation of the economic benefits of their proposed transactions.</p> <p>Officials from one member agency and a couple of external experts expressed concern that implementing a net economic benefit test might lead to reciprocal action by other countries that could reduce opportunities for foreign investment by U.S. companies.</p> <p>Officials from a few member agencies noted that any effort to implement a net economic benefit test would need to be designed with existing international treaties and trade agreements in mind.</p>

Legend:
CFIUS Committee on Foreign Investment in the United States
Source: GAO analysis of interviews with stakeholders. | GAO-18-249

Conclusions

The United States maintains an open investment climate that recognizes the benefits of foreign investment to its economy. CFIUS reviews certain foreign acquisitions, mergers, or takeovers of U.S. businesses to determine the effect of the transaction on the national security of the United States. The increased number of covered transactions notified to CFIUS and the complexity of these cases compared with the modest increase in the number of people assigned to reviewing them have, according to member agency officials, taxed the staff of CFIUS member agencies. Member agency officials and external experts have expressed particular concern that CFIUS member agencies were limited in their ability to complete core functions, such as identifying non-notified transactions and monitoring mitigation measures. At the same time, congressional bills have been introduced proposing changes to FINSA that could increase the committee’s workload. Officials from Treasury and other member agencies are aware of pressures on their CFIUS staff

given the current workload and have expressed concerns about possible workload increases. Treasury and OMB have begun to collect information from agencies on their current CFIUS staffing levels. This is a crucial first step that could facilitate a better understanding for both the committee and Congress of the current staffing levels across the committee's organizational structure. However, Treasury, as CFIUS lead, has not coordinated member agency efforts to assess the current and future staffing levels needed to complete the committee's core functions. Without attaining an understanding of the staffing levels needed to address the current and future CFIUS workload, particularly if legislative changes to CFIUS's authorities further expand its workload, CFIUS may be limited in its ability to fulfill its objectives and address threats to the national security of the United States.

Recommendation for Executive Action

The Secretary of the Treasury, as the chair of CFIUS, and working with member agencies, should coordinate member agencies' efforts to better understand the staffing levels needed to address the current and projected CFIUS workload associated with core committee functions. (Recommendation 1)

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Justice, Labor, State, and the Treasury as well as the Offices of the U.S. Trade Representative, Science and Technology Policy, and the Director of National Intelligence, and the Federal Communications Commission. We also provided a draft to the Office of Management and Budget.

Treasury provided written comments, which are reproduced in appendix V. In its comments, Treasury stated that it is working with OMB to determine current resource levels across the CFIUS member agencies and has encouraged agencies to assess their staffing needs. Treasury also stated that it generally concurred with the draft report's recommendation to "conduct an assessment to better understand staffing levels needed to address the current and projected CFIUS workload." However, Treasury noted that CFIUS does not have a centralized budget, and Treasury does not have the authority over CFIUS staffing levels at member agencies. We acknowledge Treasury's points and, therefore, we modified the report and clarified the recommendation to focus on Treasury's coordination role, since, as we note in the report, Treasury is responsible for coordinating the operations of the committee and

communicating on the committee's behalf with the parties, members of Congress, and the general public. Treasury stated in an email that the clarifications to the recommendation address the point raised in its comment letter.

USDA also provided written comments, reproduced in appendix VI. In its comments, USDA stated that it generally agreed with the findings in GAO's draft report. The letter further noted that USDA is satisfied with Treasury's willingness to include USDA in cases related to food and agriculture and is comfortable continuing to work as a non-voting member of CFIUS.

The Departments of Commerce, Homeland Security, State, Treasury, and the Offices of the U.S. Trade Representative and Science and Technology Policy provided written technical comments, which we incorporated as appropriate.

The Departments of Defense, Energy, Health and Human Services, Justice, Labor, the Office of the Director of National Intelligence, and the Federal Communications Commission indicated via email that they did not have comments.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Justice, Labor, State, and the Treasury as well as the Offices of the U.S. Trade Representative, Science and Technology Policy, and the Director of National Intelligence, and the Federal Communications Commission. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have questions about this report, please contact Kimberly Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov or Marie A. Mak at (202) 512-2527 or makm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found

on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.



Kimberly M. Gianopoulos
Director, International Affairs and Trade



Marie A. Mak
Director, Acquisition and Sourcing Management

List of Requesters

The Honorable Steve Chabot
Chairman
Committee on Small Business
House of Representatives

The Honorable Bennie G. Thompson
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Devin Nunes
Chairman
Permanent Select Committee on Intelligence
House of Representatives

The Honorable Robert B. Aderholt
Chairman
Subcommittee on Agriculture, Rural Development, Food and Drug
Administration, and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable John Culberson
Chairman
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable Mike Rogers
Chairman
Subcommittee on Strategic Forces
Committee on Armed Services
House of Representatives

The Honorable Dana Rohrabacher
Chairman
Subcommittee on Europe, Eurasia, and Emerging Threats
Committee on Foreign Affairs
House of Representatives

The Honorable Ralph L. Abraham
House of Representatives

The Honorable Mo Brooks
House of Representatives

The Honorable Bradley Byrne
House of Representatives

The Honorable Ken Calvert
House of Representatives

The Honorable Paul Cook
House of Representatives

The Honorable Peter A. DeFazio
House of Representatives

The Honorable Rosa DeLauro
House of Representatives

The Honorable Brian Fitzpatrick
House of Representatives

The Honorable Denny Heck
House of Representatives

The Honorable Duncan D. Hunter
House of Representatives

The Honorable Sam Johnson
House of Representatives

The Honorable Walter B. Jones
House of Representatives

The Honorable Thomas McClintock
House of Representatives

The Honorable Robert Pittenger
House of Representatives

The Honorable Bill Posey
House of Representatives

The Honorable Chris Smith
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report (1) examines changes in the Committee on Foreign Investment in the United States' (CFIUS) workload and staffing from 2011 through 2016, and (2) provides information on stakeholder views on potential changes to CFIUS.

To address these objectives, we reviewed relevant laws, executive orders, and regulations. We interviewed officials from each CFIUS voting member agency, including the Departments of Commerce, Defense, Energy, Homeland Security, Justice, State, and the Treasury as well as the Offices of the U.S. Trade Representative and Science and Technology Policy. We also interviewed officials from the two nonvoting *ex officio* members, the Office of the Director of National Intelligence and the Department of Labor. In addition, we interviewed officials from nonmember agencies that have CFIUS case-related expertise, including the Departments of Agriculture and Health and Human Services, and the Federal Communications Commission.

To examine the changes in CFIUS workload and staffing levels over the past 5 years, we analyzed information on workload and staffing levels at the voting member agencies from 2011 through 2016, the most recent information available at the time of our review. We also reviewed the 2014 and 2015 CFIUS annual reports. In addition, we interviewed officials from the nine CFIUS voting member agencies about their workload and staffing levels; any changes in the volume, types, and complexity of transactions reviewed by CFIUS; and their ability to complete the core functions of the committee. We requested information from the 9 CFIUS voting member agencies on the number of staff assigned to CFIUS more than 50 percent of their time.

To collect information on stakeholder views on potential changes to CFIUS, we conducted individual semi-structured interviews with selected stakeholders, which consisted of officials from the nine CFIUS voting member agencies, the two *ex officio* nonvoting member agencies, and three selected nonmember agencies that have CFIUS case-related expertise, as well as with external experts. To identify external experts, we asked stakeholders to recommend other stakeholders we should speak with (i.e., snowball sampling). From our list of potential stakeholders, we selected 16 external experts, including former government officials, lawyers who represent parties with transactions notified to CFIUS, and representatives from industry associations and think tanks. In our interviews, we collected views and information on the challenges that CFIUS faces, options for addressing the challenges, and the possible benefits and drawbacks of these options. The information

obtained from these stakeholders cannot be generalized across all stakeholders; however, these stakeholders provided insights into the possible effects of implementing certain changes to CFIUS.

We conducted this performance audit from December 2016 to February 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Characteristics of Transactions Reviewed by the Committee on Foreign Investment in the United States (CFIUS)

CFIUS reviews covered transactions from a large variety of industries, but the largest number of transactions reviewed come from the manufacturing sector. In 2016, the manufacturing sector represented approximately 42 percent of the 172 covered transactions reviewed by CFIUS and, in recent years, the number of transactions reviewed from that sector has increased from 49 transactions in 2011 to approximately 72 transactions in 2016.¹ Computer and electronic transactions, such as those by companies that produce semiconductor technology, accounted for approximately 32 of the 72 covered transactions from the manufacturing sector that CFIUS reviewed in 2016. For instance, in 2016, CFIUS reviewed the potential acquisition of Aixtron, a Germany-based semiconductor firm with assets in the United States, by the Chinese firm Fujian Grand Chip Investment Fund. That year, the President chose to prohibit the acquisition of the U.S. business of Aixtron upon determining that the foreign purchasers might take action that threatens to impair the national security of the United States in exercising control of the U.S. business of Aixtron.² Treasury, as the chair of CFIUS, stated in a press release that the national security risks posed by the transaction related to, among other things, a Chinese firm obtaining the company's body of knowledge and experience.

Transactions from the manufacturing sector involve a variety of other industries, including textiles, chemicals, and food manufacturing. For example, in 2013, according to a report from the U.S.-China Economic and Security Review Commission, CFIUS reviewed the acquisition of Smithfield Foods Inc., for \$7.1 billion, by China's Shuanghui International Holdings Ltd. A letter submitted by members of the Senate Agriculture Committee raised concerns that the transaction posed a threat to the nation's food security; however, according to Security and Exchange Commission filings, CFIUS ultimately completed its investigation and cleared the transaction to proceed.

Acquisitions by Chinese-owned companies accounted for the largest number of covered transactions reviewed by CFIUS from 2014 through 2016. According to CFIUS, the number of covered transactions the committee reviewed from China has increased substantially in recent

¹As of January 2018, data provided by Treasury had not been finalized, as CFIUS was still developing the 2016 annual report.

²*Executive Order Regarding the Proposed Acquisition of a Controlling Interest in Aixtron SE by Grand Chip Investment GmbH*, 81 Fed. Reg. 88,607 (Dec. 7, 2016).

years, from 10 transactions in 2011 to 67 in 2016. In previous years, companies from the United Kingdom were party to the largest share of covered transactions submitted for CFIUS review; however, from 2013 through 2015, parties from the United Kingdom and Canada submitted the second and third largest number of notices. Forty-four percent of all covered transactions reviewed by the committee during this time period involved companies from China, the United Kingdom, or Canada.³

³For more information on transactions reviewed by CFIUS, see Committee on Foreign Investment in the United States, *Annual Report to Congress (2015)*, and Congressional Research Service, *The Committee on Foreign Investment in the United States* (Oct. 11, 2017).

Appendix III: Factors to Determine Whether Submitted Transactions Pose a National Security Risk

Table 12: Treasury List of Illustrative Factors the Committee on Foreign Investment in the United States and the President Should Consider in Determining Whether a Transaction Notified to the Committee Poses a National Security Risk

- The potential effects of the transaction on the domestic production needed for projected national defense requirements.
- The potential effects of the transaction on the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies.
- The potential effects of a foreign person's control of domestic industries and commercial activity on the capability and capacity of the United States to meet the requirements of national security.
- The potential effects of the transaction on U.S. international technological leadership in areas affecting U.S. national security.
- The potential national security-related effects on U.S. critical technologies.
- The potential effects on the long-term projection of U.S. requirements for sources of energy and other critical resources and material.
- The potential national security-related effects of the transaction on U.S. critical infrastructure, including critical physical infrastructure such as major energy assets.
- The potential effects of the transaction on the sales of military goods, equipment, or technology to countries that present concerns related to terrorism; missile proliferation; chemical, biological, or nuclear weapons proliferation; or regional military threats.
- The potential that the transaction presents for transshipment or diversion of technologies with military applications, including the relevant country's export control system.
- Whether the transaction could result in the control of a U.S. business by a foreign government or by an entity controlled by or acting on behalf of a foreign government.
- The relevant foreign country's record of adherence to nonproliferation control regimes and record of cooperating with U.S. counterterrorism efforts.
- Other factors that the President or the committee may determine to be appropriate, generally or in connection with a specific review or investigation.

Source: Department of the Treasury: Office of Investment Security Guidance Concerning the National Security Review Conducted by the Committee on Foreign Investment in the United States, 73 Fed. Reg. 74,567 (Dec. 8, 2008) (detailing the illustrative list of factors in section 721(f) of the Defense Production Act of 1950, as amended). | GAO-18-249

Appendix IV: Reported Number of Agency Staff Assigned to Committee Activities

Table 13: Reported Number of Member Agency Staff Assigned to Committee on Foreign Investment in the United States (CFIUS) Activities in Fiscal Year 2016

Agency	Reported Number of Agency Staff Assigned to CFIUS Activities
Department of Justice	23
Department of the Treasury (Chair)	18
Department of Defense	15
Department of Homeland Security	11
Department of Commerce	11
Department of Energy	4
Department of State	4
Office of Science and Technology Policy	4
Office of the United States Trade Representative	1

Source: GAO presentation of information reported by agencies. | GAO-18-249

Note: These figures represent the number of employees that, according to agency officials, are assigned to CFIUS activities at least 50 percent of the time. The agencies provided the number of staff assigned for fiscal year 2016.

Appendix V: Comments from the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

JAN 17 2018

ASSISTANT SECRETARY

Kimberly M. Gianopoulos, Director, International Affairs and Trade
Marie A. Mak, Director, Acquisition and Sourcing Management
Government Accountability Office
441 G St. N.W.
Washington, DC 20548

Dear Mses. Gianopoulos and Mak:

The Department of the Treasury (Treasury), as the chair of the Committee on Foreign Investment in the United States (CFIUS), appreciates the work conducted by the Government Accountability Office (GAO) over the past year culminating in your report entitled, "Committee on Foreign Investment in the United States: Treasury Should Assess Resources Needed to Address Increased Workload." Treasury believes that CFIUS plays a critical role in protecting the national security of the United States and that it is essential for CFIUS to have the tools and resources necessary to fulfill its national security mandate.

At senior levels, Treasury has encouraged agencies to assess their staffing needs to determine whether staffing increases are necessary in light of CFIUS's workload, which, as your report acknowledges, has been increasing in both complexity and volume. To this end, Treasury is also working with the Office of Management and Budget, to determine current resource levels across the CFIUS member agencies.

Treasury generally concurs with GAO's recommendation that, "Treasury, working with member agencies, should conduct an assessment to better understand staffing levels needed to address the current and projected CFIUS workload." However, CFIUS is unique from other many other government programs, in that, as a committee, CFIUS does not have a centralized budget. Therefore, the availability of staffing and resources for CFIUS is dependent upon the budgeting priorities of each of its member agencies. As a result, Treasury, as chair of CFIUS, does not have the authority to assess, advise, or adjust CFIUS staffing levels at its member agencies.

In order to better align with CFIUS's structure, Treasury believes that GAO's recommendation should be amended along the lines that CFIUS member agencies, working with Treasury, as chair of CFIUS, should conduct an assessment to better understand the staffing levels needed by their agencies to address the current and projected CFIUS workload.

Sincerely,

Heath Tarbert
Assistant Secretary for
International Markets and Investment Policy

Appendix VI: Comments from the Department of Agriculture



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

1400
Independence
Avenue SW

Washington, DC
20250-0103

January 10, 2018

Ms. Kimberly M. Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office

Dear Ms. Gianopoulos,

The U.S. Department of Agriculture (USDA) appreciates the opportunity to respond to the U.S. Government Accountability Office (GAO) draft report *Committee on Foreign Investment in The United States: Treasury Should Assess Resources Needed to Address Increased Workload*, GAO Report Number 18-249 dated December 20, 2017.

USDA generally agrees with the findings in the GAO draft report. As noted in the report, USDA has been called upon to review approximately 25 of the more than 550 Committee on Foreign Investment in the United States (CFIUS) cases in the last three years. We are satisfied with our relationship with the Department of Treasury and their willingness to include USDA in the cases that are relevant to food and agriculture. Given our existing resources, USDA is comfortable with continuing to work as a non-voting member of the Committee reviewing only those case that impact our mission areas and co-leading critical food and agricultural transactions.

Thank you again for the opportunity to review and respond to the GAO draft report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald K. Bice".

Donald K. Bice
Acting Deputy Assistant Secretary

AN EQUAL OPPORTUNITY EMPLOYER

Appendix VII: GAO Contacts and Staff Acknowledgments

GAO Contacts

Kimberly M. Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov.
Marie A. Mak, (202) 512-4841 or makm@gao.gov.

Staff Acknowledgments

In addition to the contacts named above, Christine Broderick (Assistant Director), Christina Werth (Analyst-in-Charge), Anthony Costulas, Scott Purdy, Kendal Robinson, Lynn Cothorn, Grace Lui, Justin Fisher, and Neil Doherty contributed to this report.

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