

Filing Fee Now Required for Voluntary CFIUS Notices

MAY 8, 2020

Beginning May 1, 2020, the U.S. Department of the Treasury (Treasury) will require parties to pay a filing fee for voluntary notices submitted to the Committee on Foreign Investment in the United States (CFIUS). This includes voluntary notices of both “covered transactions” and “covered real estate transactions.” Generally, CFIUS will not formally accept a voluntary notice and begin its review of the transaction until the applicable fee has been received. [1] Payment must be made through Pay.gov. Once payment has been submitted, the payment confirmation email from Pay.gov must be forwarded to cfius@treasury.gov and the assigned Treasury case officer (if any). Instructions for paying the filing fee are available on the Treasury’s website [here](#).

The fee amount is based on the value of the transaction, as summarized in the table below.[2]

TRANSACTION VALUE RANGE	FEE AMOUNT
\$0 to \$499,999.99	\$0
\$500,000 to \$4,999,999.99	\$750
\$5,000,000 to \$49,999,999.99	\$7,500
\$50,000,000 to \$249,999,999.99	\$75,000
\$250,000,000 to \$749,999,999.99	\$150,000

TRANSACTION VALUE RANGE		FEE AMOUNT
\$750,000,000 +		\$300,000

In extraordinary circumstances relating to national security, CFIUS can decide to waive the filing fee in whole or in part.^[5] CFIUS has not released guidance describing what constitutes “extraordinary circumstances” for purposes of this interim rule, but we do not anticipate that waivers will be granted for a significant number of transactions. Given the range of filing fees, it will be important to determine how CFIUS will value the transaction before filing. Pursuant to the interim rule, the value of the transaction for purposes of determining the required fee amount is “the total value of all consideration that has been or will be provided in the context of the transaction by or on behalf of the foreign person that is a party to the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, or services or other in-kind consideration.”^[3] Notably, if the filing fee submitted with a voluntary notice is insufficient, the Staff Chairperson may reject the filing. Prior to rejecting the notice, the Staff Chairperson will inform the parties in writing of the insufficiency of payment and provide the parties three business days to pay the remainder of the fee.^[4]

Treasury will be accepting comments from interested parties about the imposition of this filing fee through June 1, 2020.

If you have questions related to CFIUS filings or if you want to discuss potentially filing a public comment about the new filing fee, please reach out to any of the attorneys listed as authors of this post or your Winston & Strawn relationship attorney.

[1] §§ 800.1102 & 802.1102.

[2] §§ 800.1101 & 802.1101.

[3] §§ 800.1103 & 802.1103.

[4] §§ 800.1108 & 802.1108.

[5] §§ 800.1106 & 802.1106.

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