

On April 29, 2020, the US Department of the Treasury (the Treasury) [issued an interim rule](#), effective May 1, 2020, concerning applicable filing fees for all formal notice filings with the Committee on Foreign Investment in the United States (CFIUS or Committee), essentially implementing the [proposed rule issued on March 9, 2020](#).

## Comment Period Extended

This rule implementing the filing fees is being issued as an interim rule, as opposed to a final rule, to allow for an additional comment period through June 1, 2020, for potentially interested parties who may have been unable to comment because of the unique challenges posed by the coronavirus disease 2019 (COVID-19) pandemic. Meanwhile, however, the Treasury will begin to collect fees on May 1, 2020. This publication summarizes the CFIUS filing fee requirements.

## Filing Fees

The CFIUS filing fees are proportional to the “value of the transaction,” as follows:

Transaction Value (US\$)	Filing Fee (US\$)
Below \$500,000	No Filing fee
Greater than \$500,000 but less than \$5 million	\$750
Greater than \$5 million but less than \$50 million	\$7,500
Greater than \$50 million but less than \$250 million	\$75,000
Greater than \$250 million but less than \$750 million	\$150,000
Greater than \$750 million	\$300,000

## Only for Joint Notice Filings

The filing fees will only apply to joint notices. The fees will not apply to voluntary or mandatory declaration filings, or for reviews initiated by CFIUS. A filing fee applies to all joint notices, including those submitted in lieu of, or after CFIUS’ review of, any mandatory declaration filings (e.g., if CFIUS requests a formal notice after reviewing a declaration filing, a filing fee would apply). A filing fee would also apply to any joint notice that was submitted in response to a request from CFIUS (e.g., if parties to a transaction had decided not to submit a voluntary joint notice to CFIUS, but CFIUS contacted those parties and requested a joint notice).

## Determining Value of Transaction for Purposes of Filing Fee Calculation

- Value based on entire transaction** – The interim rule provides that the determinative “transaction value” for the purposes of assessing filing fees will be the total value of consideration paid by or on behalf of the foreign person who is a party to the transaction. Where a transaction involves both US and non-US businesses, the rule requires parties use the global value of the transaction.
- Fair market value if consideration is undetermined** – Where consideration for the transaction is undetermined, the value of the transaction is to be the fair market value of what is acquired.
- Lower fees if US business portion is minimal** – The rule provides for a minimal fee (US\$750) if the US business is valued below US\$5 million, but the entire transaction is valued at US\$5 million or more.
- Valuing joint ventures with one or more US businesses contributed** – The rule provides it is the value of the US business contributed or collective value of each US business contributed. Given that this approach was not included in the proposed rule, however, the Treasury offered potential alternative valuation approaches for consideration. One alternative approach is to value a joint venture based on the foreign person’s proportional ownership interest in the joint venture, and another is to base the value on the contribution made by the foreign person to the joint venture. These alternative approaches were only offered in the introduction to solicit comments and are not effective on May 1, 2020.
- Valuing multiphase transactions** – Multiphase transactions should be valued based on the total value of each phase, as may be reasonably determined, as of the date of the filing.
- Valuing contingent equity interests** – The rule provides that the value includes the consideration that was paid to acquire the contingent equity interest and any other consideration in connection with the conversion of the interest if: conditions that lead to conversion will occur imminently; the conditions are within the control of the acquiring party; and the consideration for the interest acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition.

## Filing Fee Must be Paid Prior to “Acceptance” of Filing

Like other regulatory filing fees (e.g., antitrust filings under the US Hart-Scott-Rodino Antitrust Improvements Act of 1976), if a CFIUS filing fee applies and has not been waived, the rule provides that the fee must be paid to the Treasury prior to the CFIUS filing being accepted. If parties need to withdraw and refile that notice, however, the rule does not propose a repeat filing fee as long as no material change has occurred as to the information reported in the notice.

## Will Apply Based on Time of Formal Filing, Not Acceptance

A filing fee will be required for formal filings (not acceptances by CFIUS) made by parties on or after May 1, 2020. A filing fee will be required for any prefilings (i.e., “draft” written notice filings) submitted to CFIUS prior to May 1, 2020, that will have a formal written notice filed on or after May 1, 2020.

Please [contact](#) our team with any questions.

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