

Government Shutdown Affects CFIUS and Team Telecom Reviews

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The federal government failed to enact appropriations legislation on December 21, 2018, resulting in a partial government shutdown. The shutdown affects numerous government agencies and functions, including reviews by the Committee on Foreign Investment in the United States (CFIUS), which is led by the U.S. Department of the Treasury (Treasury), and reviews by Team Telecom, which is comprised of representatives from the Departments of Homeland Security, Justice, and Defense.

Key Takeaways for CFIUS Matters

- **For the duration of the shutdown, CFIUS activities will be suspended except for certain “caretaker functions” as outlined in Treasury’s lapse of appropriations plan.** According to Treasury’s plan, “caretaker functions” will take place for cases initiated prior to the enactment of the Foreign Investment Risk Review Modernization Act (FIRRMA) and for CFIUS-related national security exigencies. However, CFIUS has suspended its acceptance and review of all post-FIRRMA declarations and notices.
- **CFIUS-related deadlines will be extended (“tolled”) during the shutdown.** The deadlines for all CFIUS cases initiated after the enactment of FIRRMA are “tolled” during the shutdown, as authorized by FIRRMA and explained in Treasury’s plan. Any CFIUS review or investigation period will be extended by the length of the shutdown. For example, if the government is shut down for 20 days, a pending CFIUS review or investigation would be extended by 20 days. If that tolled deadline falls on a weekend or holiday, the time period would be extended

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further to the next business day. The Treasury plan is a departure from pre-FIRRMA treatment of government shutdowns, in which the clock continued to run and no deadlines were tolled.

- **Expect delays in CFIUS actions after the government reopens.** While parties can submit notices and declarations to CFIUS during the shutdown, CFIUS will not act on them until the government reopens. This will likely create a backlog with CFIUS, lengthening its response times.

Key Takeaway for Team Telecom Reviews

- **Reviews will be delayed due to reductions in personnel.** During the shutdown, Team Telecom staff is operating with reduced personnel on a rotational basis. While Team Telecom continues to review applications during the shutdown, its processes, including actions in mitigation compliance matters, will likely take longer than normal because of staff reductions. A backlog of Team Telecom cases is also likely to cause extended review periods once the government reopens. Additionally, the Federal Communications Commission (FCC) has also suspended most of its operations. Although FCC applications and other filings may continue to be submitted through many of the FCC's electronic filing systems, such filings (with certain limited exceptions) will not be reviewed or processed by the FCC and will not be considered accepted until the day after the FCC resumes normal operations. The FCC has also extended its normal filing deadlines such that any submissions that would otherwise be due during the shutdown will instead be due on the second day of normal operations. Although this extension does not automatically apply to comment or filing periods that occur outside of the shutdown period, the FCC will consider whether it is appropriate to issue additional extensions once the government reopens.

Wiley Rein has unparalleled CFIUS, national security, and telecommunications, media, and technology (TMT) expertise that draws on senior government-level experience. Should you have any questions regarding the impact of the government shutdown on CFIUS and Team Telecom reviews, please do not hesitate to contact one of the members of our CFIUS, national security, and TMT practices listed on this alert.

Jonathan Babcock, a Law Clerk in Wiley Rein's International Trade practice, contributed to this alert.