



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 23, 2018

S. 2098 **Foreign Investment Risk Review Modernization Act of 2018**

*As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs
on May 22, 2018*

SUMMARY

S. 2098 aims to expand, modernize, and strengthen the operations of the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency committee that considers the national security implications of foreign investment in the U.S. economy.

CBO estimates that implementing S. 2098 would cost \$100 million over the 2019-2023 period, assuming appropriation of the necessary amounts. Enacting the bill could affect revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that under the bill no revenues would be collected. Enacting the bill would not affect direct spending.

CBO estimates that enacting S. 2098 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2098 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring certain transactions between foreign and domestic entities to be reviewed by CFIUS. CBO estimates that the cost to domestic entities to comply with the mandate would fall below the threshold established in UMRA (\$160 million in 2018, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of S. 2098 is shown in the following table. The costs of the legislation fall primarily within budget functions 050 (national defense), 750 (administration of justice), and 800 (general government).

	By Fiscal Year, in Millions of Dollars						2019- 2023
	2018	2019	2020	2021	2022	2023	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	20	20	20	20	20	100
Estimated Outlays	0	20	20	20	20	20	100

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 2098 will be enacted near the end of 2018 and that spending will follow historical patterns for similar activities.

CFIUS is an interagency committee that serves the President by reviewing the national security implications of foreign investment in the U.S. economy. CFIUS members include the Departments of the Treasury (which chairs the committee), State, Defense, Justice, Commerce, Energy, and Homeland Security; the Office of the United States Trade Representative; and the White House’s Office of Science and Technology Policy. The Department of Labor, Office of the Director of National Intelligence, and five other White House offices are also involved. Through CFIUS reviews, the President has the authority to block any foreign investment in the U.S. that threatens national security.

CFIUS reviews foreign investment transactions to determine if:

- the investment threatens national security;
- the investor is controlled by a foreign government; and
- a proposed financial transaction could affect homeland security or would result in foreign control of any critical infrastructure that could impair national security.

According to CFIUS and the Congressional Research Service there were over 1,800 foreign investment transactions in the United States over the 2008-2015 period. Foreign investors sent notice to CFIUS of their intent to acquire, merge, or takeover U.S. companies in 925 of those cases. CFIUS investigated 333 of those transactions. One transaction was blocked by the President during that 18 year period. Two have been blocked by the President since 2015. CBO is unaware of any comprehensive information on the annual costs to conduct CFIUS reviews as its activities are spread throughout many agencies.

Under S. 2098 the committee would be required to review and analyze more investment transactions, including real estate transactions and non-controlling minority investments. The bill also would provide for a more intensive review of foreign investments generally, and more detailed reviews of investments involving certain countries. The bill would expand the definitions of critical technologies and companies that CFIUS would have to consider in its reviews and it would require CFIUS to report more information to the Congress.

Government Accountability Office (GAO) reports indicates that more than 90 federal employees are assigned to CFIUS for at least 50 percent of their work time. Many more employees across the government work on CFIUS matters on an as needed basis. Using information from the Department of the Treasury, the Office of Management and Budget, and GAO about the scope of the current CFIUS review process, CBO expects that the workload under the bill would more than double the current workload and estimates that the additional would cost about \$20 million annually, primarily for the Departments of the Treasury, Homeland Security, and Defense.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Section 22 would authorize CFIUS to collect fees from private-sector entities involved in the transactions that the committee reviews. Those fees would be recorded as revenues in the budget, would be deposited into the proposed Committee on Foreign Investment in the United States Fund, and would only be available for use by CFIUS if provided for in a future appropriation act. Because spending of fees would be subject to appropriation, CBO expects that CFIUS would be unlikely to collect them. Thus, CBO estimates that enacting S. 2098 would not increase revenues over the 2018-2028 period. Enacting the bill would not affect direct spending.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting S. 2098 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

MANDATES

S. 2098 would impose a private-sector mandate as defined in UMRA by requiring certain transactions between foreign and domestic entities to be reviewed by CFIUS. Under current law, foreign entities seeking to acquire a U.S. business or its assets may request

CFIUS to review the transaction to determine whether the acquisition raises national security concerns. S. 2098 would make a CFIUS review mandatory in certain cases, such as transactions where a significant portion of the acquiring entity is owned by a foreign government. Because the cost of the CFIUS review would be borne primarily by the foreign buyers, CBO estimates that the cost to domestic entities to comply with the mandate would fall below the threshold established for private-sector mandates in UMRA (\$160 million in 2018, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On June 8, 2018, CBO transmitted a cost estimate for S. 2987, the John S. McCain National Defense Authorization Act of Fiscal Year, as ordered reported by the Senate Committee on Armed Services on June 5, 2018. Title 17 of S. 2987 and S. 2098 are similar and CBO's estimates of their costs are the same.

ESTIMATE PREPARED BY

Federal Costs: Matthew Pickford
Mandates: Andrew Laughlin

ESTIMATE REVIEWED BY

Kim P. Cawley
Unit Chief, Natural Resources Cost Estimate Unit

H. Samuel Papenfuss
Deputy Assistant Director for Budget Analysis

Theresa Gullo
Assistant Director for Budget Analysis