

Statement of Senator Mike Crapo
Committee on Banking, Housing, and Urban Affairs
January 18, 2018

Crapo Statement at Hearing on CFIUS Reform

WASHINGTON – U.S. Senator Mike Crapo (R-Idaho), Chairman of the United States Senate Committee on Banking, Housing and Urban Affairs, today delivered the following remarks during a full committee hearing entitled “CFIUS Reform: Examining the Essential Elements.”

The text of Chairman Crapo’s remarks, as prepared, is below.

“Today the Committee will begin to evaluate the essential national security elements underlying a comprehensive proposal to reform the review process used by the Committee on Foreign Investment in the United States, or ‘CFIUS.’

“Thank you to Senators Feinstein and Cornyn for their testimony on their bipartisan Foreign Investment Risk Review Modernization Act of 2017.

“This bill was first introduced by Senators Cornyn and Feinstein on November 8th to ‘modernize and strengthen CFIUS to more effectively guard against the risk to the national security of the United States posed by certain types of foreign investment.’

“The Senators and their staff have worked over a year with concerned national security officials, the Treasury Department and various affected industry representatives.

“This comprehensive bill could be the first update to the body of CFIUS law in more than a decade. It would expand the reach of current law in a number of respects, while codifying some current administrative practices, and result in significant changes to jurisdiction, process and enforcement.

“A study produced for the Pentagon’s DIUx unit, which enlists start-ups to find solutions for the military’s most advanced technology-related requirements, is credited as being the catalyst for much of the impetus behind this CFIUS reform.

“The DIUx study highlights the problems arising from the fact that the U.S. government does not currently monitor or restrict venture investing, nor stop potential transfers of what’s known variously as early-stage, foundational or critical technology know-how, particularly with regard to certain types of Chinese investment in the United States.

“Today’s hearing also draws witnesses from one perspective of the private sector that is concerned not only with inbound investment, but also outbound transactions and from the venture capitalists that support American innovation.

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“We are also joined by two long-time CFIUS analysts, with particular expertise in regard to China’s economy, trade practices and national security objectives.

“The Committee will benefit from learning more about the types and numbers of transactions that may be circumventing CFIUS and if any are believed to have already transferred critical technology.

“Many of us are interested in learning more about the ways China acquires U.S. technology and which improvements to the current system are warranted, particularly with regard to those investments that fall short of a foreign person’s actual ownership or control.

“We are also interested in the issue of emergent ‘critical technology,’ and the witnesses’ input on how it would be defined and applied by CFIUS.

“Additionally, we hope to hear more on the impact on U.S.-based multinational corporations as a result of CFIUS unilaterally restricting U.S. outward investment and associated technology, and whether U.S. companies would lose the ability to compete to allied companies or others in third country markets.

“It is also important to study the question of necessary resources for any proposed reform to CFIUS. While CFIUS certified about 260 applications last year, the Committee looks forward to testimony on the changes contemplated by S. 2098 and their impact on the number of reviews, staff needs and resources going forward, and the impact that, in turn, would have on U.S. national security if the resources fell short.

“CFIUS is but one leg of a triad that secures national security related technology and the defense industrial base. The other two are the U.S. export control regime and federal investment itself in research and development that keeps the industrial base resilient and innovative.

“The Committee must be mindful that in pursuing its mandate to assure the national security interests of the United States under CFIUS, that it not create a situation where it chills a wide range of commercial activities that have traditionally been controlled through export control laws.

“The United States is both the world’s largest foreign direct investor and beneficiary of foreign direct investment (FDI), and it ranks among the most favorable destinations for FDI which plays an important role in not only the U.S. economy, but specifically in the innovation of its industrial base, and therefore, its national security.

“It is clear that the current CFIUS system is itself under stress. Moving forward, the Committee must prepare itself to thoughtfully consider all of the recommendations made

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by S. 2098 and other CFIUS legislation, with the full awareness of the national security and economic stakes at the heart of it.

“It is a new world. The laws, regulations and policies currently exercised by CFIUS may no longer protect U.S. technology from illicit transfers as they did in the past.

“We must work together, as a Congress, first to assure the national security of the United States by granting the Administration all the authority it needs to confront this growing threat, but then not exceed that grant to the detriment of maintaining a free, fair and open U.S. investment policy.”

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