



NVCA's policy team has been actively engaged on legislation that would heavily **scrutinize foreign investment, and would impact venture funds with foreign LPs, VCs that co-invest with foreign entities, and venture-backed companies raising capital from foreign entities.** The *Foreign Investment Risk Review Modernization Act* (FIRRMA) would allow **U.S. government review of even minority investments** into critical technology companies through the Committee on Foreign Investment in the U.S. (CFIUS). Concerns over Chinese investment into critical technology has animated the debate. FIRRMA seeks to curtail situations where a foreign investor can leverage a minority investment to gain access to sensitive technical information of a U.S. company. For additional details, [see our last policy update](#) on FIRRMA that was sent at the end of March and our [April submission](#) to the House Financial Services Committee.

Over the past month, NVCA has worked closely with the Treasury Department, Senate Banking Committee, and House Financial Services Committee to secure key changes to FIRRMA to avoid disruption and cost to the venture industry. Earlier today, the Banking Committee released a draft amendment to FIRRMA that **reflects important changes NVCA has secured to FIRRMA. The text released today is a big step forward, but work remains** and we will continue to push forward, including during our advocacy day on May 17 as part of [VCs-to-DC](#). It's not too late to join us to help on this issue and many others.

Below is a run-down of where our interests stand and what we are pushing to achieve.

Goal: Clarify that foreign LPs that invest in U.S. venture funds are eligible for the passive investment exemption of FIRREA.

Status: FIRREA was drafted with a direct investment model in mind and did not anticipate how to treat a foreign LP that invests into a venture fund. Therefore, it was unclear whether an LP into a fund could avail itself of the passive investment exemption (more on that below). The Banking Committee's draft **now includes NVCA proposed language that clarifies the passive investment exemption** applies whether the investment is made "directly or indirectly."

Goal: Improve exemption from FIRREA for "passive investment," which would benefit LPs into funds and direct investments into startups from foreign entities.

Status: As introduced, FIRREA's passive investment exemption was very narrowly drafted. **NVCA secured several changes to the passive investment exemption.** For example, the Banking Committee draft no longer requires that an investor not have access to non-technical information of the underlying business that wasn't available to *all* investors to be considered passive. In addition, the new draft includes a "Special Clarification for Investment Funds" that deals with foreign LPs on advisory boards, and specifies that access to "nontechnical technical information" does not make an investor non-passive unless the information is "material."

Goal: Increase the number of countries that are exempted from FIRREA.

Status: The draft provides that [NATO](#) countries (e.g. U.K., France, Germany, Spain, Norway) and [major non-NATO allies](#) (e.g. Bahrain, Israel, Jordan, Korea,

Taiwan) are eligible to be exempted from FIRRMA. **This reflects NVCA advanced edits to broaden the universe of exempted countries.** Work remains to make countries like Switzerland eligible for exemption.

Goal: Provide specificity on what "critical technology" is under FIRRMA.

Status: Treasury's latest draft of FIRRMA establishes an ongoing interagency process to identify emerging and foundational technologies. Work remains on more carefully defining critical technology. Specifically, we are encouraging policymakers to consider situations where a product or service utilizes a technology like artificial intelligence incidentally.

Big issue remains with FIRRMA

We are pleased with the progress made to date, but one remaining issue threatens to undermine many of the changes we've seen to FIRRMA. The bill still gives **discretion to CFIUS to prescribe regulations specifying that any investment greater than a certain level or amount would be considered a non-passive investment, even if the foreign entity would meet the requirements of being a passive investment.** Our view has been that if an investor meets the passive investment test then it ought to receive the benefit of that exemption, irrespective of the percentage ownership in a company. This issue is evolving and we will keep pushing for a good result.

Please reach out to Jeff at jfarrah@nvca.org if you have questions. Thank you.

