

Congress of the United States

Washington, DC 20515

December 19, 2022

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Lloyd Austin
U.S. Department of Defense
1300 Defense Pentagon
Washington, DC 20301

The Honorable Antony Blinken
Secretary of State
U.S. Department of State
2201 C Street Northwest
Washington, DC 20520

The Honorable Gina Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Yellen, Secretary Austin, Secretary Blinken, and Secretary Raimondo:

The Committee on Foreign Investment in the United States (CFIUS) is currently in negotiations with TikTok, a social media company owned by the Chinese company ByteDance, aimed at reaching an agreement to address the national security and other risks its platform poses. TikTok could be further weaponized by the People's Republic of China (PRC) for intelligence-gathering and disinformation given the vast amounts of sensitive personal data collected by the app, its reach to tens of millions of Americans, and the PRC's virtually unlimited authority to compel it under China's National Intelligence Law. Recent indications suggest the deeply concerning possibility that CFIUS may approve an agreement that would allow the People's Republic of China (PRC) to retain significant influence over TikTok and control of its core technology, most importantly its algorithm despite significant objections from national security agencies.

The *Wall Street Journal* recently reported CFIUS's review of TikTok has been delayed due to numerous national security concerns within the executive branch, including ones related to the company's algorithm, as well as doubts over the adequacy of a deal tentatively reached over the summer. The report indicated that negotiations have been aimed at reducing Chinese government

influence on the U.S. operation, without completely severing TikTok’s Chinese ties.”¹This follows previous reports which similarly stated that the Biden administration and TikTok were negotiating on the basis of a draft agreement under which TikTok would make changes to its data security and governance. However, its owner, ByteDance, would not be required to sell it.²

Last week, *Politico* reported on “a divide between national security agencies and the Treasury Department” on the issue.³ The report stated the Department of Defense (DOD), intelligence community, and Department of Justice (DOJ) all favor forcing ByteDance to divest TikTok, but Treasury, which chairs and exerts considerable influence over CFIUS, is “wary” of divestment and “amenable” to the solution proposed in the draft agreement.⁴ Alarming, one of *Politico*’s sources suggested DOD and the intelligence community would have diminished influence in determining the outcome of this debate. The source “stressed that it would primarily be Treasury and DOJ that come to a decision on the issue, saying that DOD and other national security agencies are not intimately involved.”⁵

TikTok’s own statements have expressed confidence that the review will be resolved to the company’s satisfaction. On September 14, 2022, TikTok Chief Operating Officer Vanessa Pappas testified before Congress, “[a]lthough I will not be commenting on the CFIUS process...I can tell you that we’ve made very significant progress in that process, some of which has been disclosed in the media.”⁶ She went on to cite an initiative in which it changed “the default storage location of U.S. user data to the Oracle Cloud Infrastructure.”⁷ On November 30, 2022, TikTok Chief Executive Officer Shou Zi Chew went further, calling U.S national security concerns “a very solvable problem”

With over 100 million American monthly active users⁸ and over a billion monthly global users, TikTok’s impact is vast.⁹ It has access to extensive amounts of sensitive data from its users, including location, browsing data, and even keystrokes.¹⁰ ByteDance reportedly planned to use

¹ John D. McKinnon, et. al., *TikTok National-Security Deal Faces More Delays as Worry Grows Over Risks*, WALL STREET JOURNAL, Dec. 6, 2022, <https://www.wsj.com/articles/tiktok-national-security-deal-faces-more-delays-as-worry-grows-over-risks-11670342800>.

² Lauren Hirsch, et. al., *TikTok Seen Moving Toward U.S. Security Deal, but Hurdles Remain*, N.Y. TIMES, Sept. 26, 2022, <https://www.nytimes.com/2022/09/26/technology/tiktok-national-security-china.html>.

³ Gavin Bade, *TikTok National-Security Deal Roiled by Internal Strife*, POLITICO, Dec. 16, 2022, <https://www.politico.com/news/2022/12/16/biden-administration-at-odds-over-forcing-tiktok-divestment-00074415>.

⁴ Id.

⁵ Id.

⁶ *Social Media’s Impact on Homeland Security: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 117th Cong. (2022) (Statement of Vanessa Pappas), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Pappas-2022-09-14-REVISED.pdf>.

⁷ Id.

⁸ Alex Sherman, *TikTok Reveals Detailed User Numbers for the First Time*, CNBC, Aug. 24, 2020, <https://www.cnbc.com/2020/08/24/tiktok-reveals-us-global-user-growth-numbers-for-first-time.html>.

⁹ Press Release, Thanks a Billion!, TikTok, (Sept. 27, 2021), <https://newsroom.tiktok.com/en-us/1-billion-people-on-tiktok>.

¹⁰ Paul Mozur, et. al., *TikTok Browser Can Track Users’ Keystrokes, According to New Research*, N.Y. TIMES, Aug. 19, 2022, <https://www.nytimes.com/2022/08/19/technology/tiktok-browser-tracking.html>.

the TikTok app “to surveil individual American citizens” through their location data.¹¹ As the company is owned by PRC-based ByteDance, it is subject to the PRC’s National Intelligence Law, which requires all its citizens and businesses to assist in intelligence gathering and provide information such as user data to the government of the PRC or organs of the Chinese Communist Party (CCP).¹²

At present, it does not appear the draft agreement reportedly favored by Treasury would require ByteDance, and by extension PRC authorities, to give up control of its algorithm. If the source code for the algorithm stays under the authority or influence of the PRC government, or organs of the CCP, it may be used to suppress or amplify content according to CCP preferences or PRC laws. Indeed, PRC authorities are actively controlling social media platforms to suppress free speech, violate basic liberties, and manipulate public opinion on the peaceful civil society demonstrations in the PRC right now. Allowing PRC authorities to continue to collect sensitive data, compromise security, and influence the views of tens of millions of Americans represents a grave failure to protect our democracy.

Disturbingly, interference in U.S. politics is already occurring. An analysis by a nonprofit media lab found TikTok was “consistently and dramatically suppressing nonpartisan voting videos on its platform.”¹³ TikTok also hosts CCP propaganda accounts airing videos attacking and supporting various U.S. elected officials.¹⁴ These facts are unsurprising considering Zhang Fuping, who is the editor in chief of ByteDance and secretary of the company’s CCP committee, said in 2018 that ByteDance should “take the lead” across “all product lines and business lines” to ensure that the algorithm is informed by the “correct political direction” and “values.”¹⁵ ByteDance also reportedly signed an agreement with the PRC’s Ministry of Public Security’s Press and Publicity Bureau to boost “network influence and online discourse power” and enhance “public security propaganda, guidance, influence, and credibility.”¹⁶

Numerous leading Biden Administration officials have acknowledged TikTok poses serious security risks. Secretary Yellen recently stated there are “legitimate national security concerns” about TikTok.¹⁷ Federal Bureau of Investigation Director Christopher Wray went further in his

¹¹ Emily Baker-White, *TikTok Parent ByteDance Planned to Use TikTok to Monitor the Physical Location of Specific American Citizens*, FORBES, Oct. 20, 2022, <https://www.forbes.com/sites/emilybaker-white/2022/10/20/tiktok-bytedance-surveillance-american-user-data/>.

¹² PRC National Intelligence Law (2018), <https://www.chinalawtranslate.com/en/national-intelligence-law-of-the-prc-2017/>.

¹³ Press Release, TikTok is Actively Suppressing Voter Turnout Videos, New Study Shows, Accelerate Change, (Nov. 06, 2022), <https://acceleratechange.org/tiktok-suppressing-voting-videos/>.

¹⁴ Emily Baker-White, et. al., *On TikTok, Chinese State Media Pushes Divisive Videos About U.S. Politicians*, FORBES, Dec. 01, 2022, <https://www.forbes.com/sites/emilybaker-white/2022/11/30/tiktok-chinese-state-media-divisive-politics/>.

¹⁵ Matt Pottinger, et. al., *Xi Jinping in His Own Words*, FOREIGN AFFAIRS, Nov. 30, 2022, <https://www.foreignaffairs.com/china/xi-jinping-his-own-words>.

¹⁶ Id.

¹⁷ Brooke Singman, *TikTok Poses ‘Legitimate National Security Concerns’: Treasury Secretary Yellen*, FOXBUSINESS, Nov. 30, 2022, <https://www.foxbusiness.com/politics/tiktok-poses-legitimate-national-security-concerns-treasury-secretary-yellen>.

November 15, 2022 testimony before Congress, stating that he is “extremely concerned” about TikTok.¹⁸ Of note, he said “the possibility that the Chinese government could use it to control data collection on millions of users. Or control the recommendation algorithm, which could be used for influence operations if they so choose. Or to control software on millions of devices, which gives it opportunity to potentially compromise personal devices.”¹⁹

Central Intelligence Agency William Burns agreed that TikTok poses a threat given the PRC’s ability to use the app to extract data and shape content to “suit the interests of the Chinese leadership” and advised parents, “I’d be really careful.”²⁰ Similarly, Director of National Intelligence Avril Haines commented earlier this month on the “extraordinary” degree to which China is developing “frameworks for collecting foreign data and pulling it in” and stated parents “should be” concerned about their children using TikTok.²¹

In the bipartisan Foreign Investment Risk Review Modernization Act of 2018, Congress called upon CFIUS to consider “the extent to which a covered transaction is likely to expose, either directly or indirectly, personally identifiable information, genetic information, or other sensitive data of United States citizens to access by a foreign government or foreign person that may exploit that information in a manner that threatens national security” in its review of covered transactions.²² On September 15, 2022, President Biden formally incorporated such factors into CFIUS’s consideration of the effects of a covered transaction on U.S. national security through Executive Order 14083.²³

As an interagency committee, it is essential CFIUS decisions represent the views of all its members. The Department of Defense, Department of State, and Department of Commerce are CFIUS members with significant equities relevant to the security risks posed by TikTok. The Department of Defense also served as a co-lead agency on the TikTok review, and the State Department and Commerce Department provide vital input to the CFIUS process. It would be unacceptable for the concerns and risk assessments of CFIUS members with core national security roles to be discounted.

It is important that Congress exercise its constitutional oversight responsibilities by receiving and understanding the terms of any proposed agreement with TikTok and their security implications

¹⁸ Laura Feiner, *FBI is ‘Extremely Concerned’ About China’s Influence Through TikTok on U.S. Users*, CNBC, Nov. 15, 2022, <https://www.cnbc.com/2022/11/15/fbi-is-extremely-concerned-about-chinas-influence-through-tiktok.html>.

¹⁹ *Id.*

²⁰ Judy Woodruff, *CIA Director Bill Burns on War in Ukraine, Intelligence Challenges Posed by China*, PBSNEWSHOUR, Dec. 16, 2022, <https://www.pbs.org/newshour/show/cia-director-bill-burns-on-war-in-ukraine-intelligence-challenges-posed-by-china>.

²¹ Rachel Tillman, et. al., *Intelligence Officials Warn of Mounting Privacy, National Security Concerns From TikTok*, NY1, Dec. 06, 2022, <https://www.ny1.com/nyc/all-boroughs/news/2022/12/06/dni-fbi-haines-wray-tiktok-privacy-concerns-national-security>.

²² Foreign Investment Risk Review Modernization Act § 1702(c)(5)

²³ Exec. Order No. 14083, 87 Fed. Reg. 57369 (Sept. 20, 2022)

prior to approval by CFIUS. CFIUS's statutory authorities specifically provide for such oversight by exempting Congress from the Committee's nondisclosure requirements.²⁴

To provide Congress a better understanding of CFIUS's review of TikTok, we request the following no later than December 30, 2022:

1. All documents and communications referring or relating to CFIUS's review of TikTok, including but not limited to:
 - a. All documents related to the Department of Defense, Department of State, and Department of Commerce's participation in the review;
 - b. All Covered Transaction Analyses;
 - c. All National Security Threat Assessments, Risk Based Analyses, and/or any other threat/risk assessments (including any assessments of privacy risks or election interference) whether prepared by a CFIUS agency, the Director of National Intelligence, or another entity;
 - d. All Proposed Mitigation or final Draft National Security Agreements (whether considered prior to the divestment order or in the course of litigation);
 - e. All communications by U.S. officials, contractors, and consultants concerning the review, whether at the CFIUS agencies or other executive branch entities;
 - f. All communication by U.S. officials, contractors, and consultants concerning the review, whether at the CFIUS agencies or other executive branch entities, with TikTok, ByteDance, and their representatives, including legal counsel;
 - g. All documents and communications related to the August 14, 2020 divestment order, as well litigation challenging the divestment.

We look forward to your prompt responses.

Sincerely,



MICHAEL T. McCAUL
Ranking Member
House Foreign Affairs Committee



MIKE D. ROGERS
Ranking Member
House Committee on Armed Services

²⁴ Foreign Investment Risk Review Modernization Act § 1713(3)