Module 1: Course Introduction

Welcome to the Understanding Foreign Ownership, Control or Influence course. Foreign ownership, control or influence is commonly referred to as FOCI. This course defines the meaning of FOCI, explains what it means to be under FOCI, and FOCI's effect on a company seeking initial or continued eligibility for access to classified information. It will familiarize you with the responsibilities of Industrial Security Representatives, also known as IS Reps, in helping the Government determine the existence of FOCI, verifying reported information, and working with the Facility Security Officer, the FSO, to ensure that the information the company reports is complete and accurate.

Course Information

Purpose: Enables the student to understand more fully Foreign Ownership, Control or Influence (FOCI), and to recognize the procedures followed in determining whether a facility is under FOCI.
Audience: DCSA Industrial Security Representatives, Facility Security Officers, and others involved in the facility clearance process who would benefit from understanding FOCI.
Pass/Fail Percentage: 75%

Course Objectives

- Explain Foreign Ownership, Control or Influence and the overall process by which Defense Counterintelligence and Security Agency (DCSA) mitigates the FOCI to allow a Facility Security Clearance (FCL).
- Describe the first step taken in the FOCI process by companies seeking a facility clearance.
- Given identified FOCI factors, show which office level would adjudicate the FOCI, and what activities would occur.
- Distinguish between FOCI mitigation action plans that may be imposed on a company by DCSA.
- Describe annual reporting and meeting requirements to ensure the company's compliance, depending on the mitigation instrument/plan.
- Explain the purpose of the Committee on Foreign Investment in the United States (CFIUS) in relation to FOCI.

Course Structure

This course is organized into modules listed here:

- Course Introduction
- What is Foreign Ownership, Control or Influence?
- Identifying the Existence of FOCI
- Adjudicating FOCI
- Mitigating FOCI
- Reviewing Facilities under FOCI
- The Committee on Foreign Investment in the United States (CFIUS)

Module 2: What is Foreign Ownership, Control, or Influence?

This module will introduce you to FOCI. It will discuss briefly how FOCI can affect your job, whether you are a Facility Security Officer, a member of a Government Contracting Activity, or a DCSA Industrial Security Representative. Finally, it will introduce you to the process of mitigating the effects of FOCI.

Module 2 Objectives

- Define the meaning of FOCI and explain what it means for a company to be considered under FOCI.
- Identify the roles and responsibilities of government and contractor personnel involved in the FOCI process.
- Identify the phases of the FOCI process.

Definition of FOCI

Being under foreign ownership, control or influence —referred to as FOCI—is a state, in which a facility may find itself that affects its ability to qualify for or maintain a Facility Security Clearance, or FCL.

As defined in the National Industrial Security Program Operating Manual, or NISPOM, "a U.S. company is considered to be under FOCI when a foreign interest has power, direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the company in a manner which may result in unauthorized access to classified information or may adversely affect the performance of classified contracts."

Implications of FOCI

As mentioned, a company under FOCI is not eligible for an FCL. However, a company may be granted an FCL if the risk of the foreign ownership, control or influence can be mitigated in conformity with the national interest.

This is referred to as FOCI Mitigation, a process whereby unauthorized access to classified information is prevented. FOCI Mitigation uses various security measures, safeguards, and restrictions to prevent unauthorized access.

Effect of FOCI on Personnel Roles

FOCI can affect the roles and responsibilities of both government and contractor personnel. The two predominant players are the Facility Security Officer, or FSO, on the contractor side and the Industrial Security Representative, or IS Rep, on the government side.

This is Jim. Jim is the FSO for ABC, Inc., a company applying for an FCL for the first time. Jim is responsible for providing the documentation required to analyze the presence of FOCI at ABC. In addition, he assists in the development of compliance reports and participates in reviews and annual compliance meetings. He is also briefed on security requirements by the IS Rep, and works with DCSA to ensure that the required documentation is complete when it is submitted through the designated System of Record.

This is Pam. Pam is the IS Rep who monitors ABC, Inc. She provides support to the FSO, who is completing forms and collecting documentation for the FOCI analysis. She assists the company and the FSO with reporting and review requirements. In addition, she works with the FSO to ensure that the FOCI action plan is put in place are being implemented and maintained correctly. She also reviews the information received from the FSO via the designated System of Record. In some cases, Pam, when working with her Field Office Chief, or FOC, may determine appropriate security measures when the effect of FOCI is minimal. In other FOCI cases, she will work with members of the Regional and Headquarters offices to determine appropriate measures.

The FOCI Process

There are different levels of FOCI Mitigation that may be applied to an organization. In order to determine and implement the correct security measures, an organization must undergo the FOCI process.

The FOCI process has four phases — Identification, Adjudication, Mitigation, and Review — through which DCSA and the company work in tandem.

In the first phase, the source of the FOCI is identified through the review of forms and documents provided by the company and open sources. Once the source and extent of the FOCI is identified, in the second phase, the adjudication phase, DCSA analyzes the information and determines what actions are necessary to address the FOCI. DCSA also decides the actions that must be taken to prevent unauthorized access of classified information.

In the third phase, mitigation, actions are implemented to safeguard, restrict, or reasonably and effectively deny unauthorized access to classified information and controlled unclassified information. The foreign interest and all entities which it controls, is controlled by, or is under common control with are restricted from access. Actions are implemented to prevent the foreign interest's influence over the contractor's business or management to result in the compromise of classified information or adversely affect the performance of classified contracts.

The final phase involves verifying that these actions are being implemented fully and properly.

Learning Activity

Indicate the correct order of the phases of the FOCI process by drawing lines to match the sequence terms in the left column and the phases in the right column.

First	Mitigate
Second	Review
Third	Adjudicate
Fourth	Identify

See the Answer Key at the end of this Module for the correct answer.

Module 2 Summary

A company is considered to be under foreign ownership, control or influence whenever a foreign interest has power over the company, direct or indirect, whether or not exercised, and whether or not exercisable, in a manner which may result in unauthorized access to classified information or may adversely affect the performance of classified contracts.

The existence of FOCI makes a facility ineligible for a Facility Security Clearance.

In order for the facility to become eligible, the FOCI must be addressed in conformity with the national interest. This is achieved through the FOCI process.

The FOCI process has four phases: Identification, Adjudication, Mitigation, and Review.

Learning Activity Answer Key

Indicate the correct order of the phases of the FOCI process by drawing lines to match the sequence terms in the left column and the phases in the right column.

First	Mitigate
Second	Review
Third	Adjudicate
Fourth	Identify

Answer:
First – Identify
Second – Adjudicate
Third – Mitigate
Fourth – Review

Module 3: Identifying the Existence of FOCI

In module three, you will learn about the first phase of the FOCI process, Identification. You will learn about the seven FOCI Factors and the sources and documents used to identify these factors, including the Standard Form 328—the Certificate Pertaining to Foreign Interests. You will also learn how to complete this form correctly and what supplemental documents need to be submitted with this form.

Module 3 Objectives

- Identify and explain the seven FOCI factors.
- Define the sources and documents used to identify FOCI.
- Explain how to complete the SF 328.

The Seven FOCI Factors

There are seven factors by which the nature and extent of FOCI are analyzed. Each one of these factors examines the nature of the situation surrounding FOCI. The factors are then analyzed in the aggregate to determine the level of mitigation required. However, before they can be analyzed, they must be identified accurately, and understood within the context of the organization's need for a Facility Security Clearance, or FCL.

The FOCI factors that must be identified are:

- Any record of economic and Government espionage against U.S. targets
- Any record of engagement in unauthorized technology transfer, including being the target of enforcement
- The type and sensitivity of information requiring protection
- The source, nature, and extent of the FOCI
- Any record of compliance with U.S. laws, regulations, and contracts
- The nature of bilateral and multilateral security and information exchange
- Ownership or control, in whole or in part, by a foreign government

Sources Used to Identify FOCI

DCSA uses several documents and sources to identify FOCI factors.

The SF 328 is a form that is filled out by the company through the DCSA designated System of Record. This form is required when applying for an FCL. You will learn about the SF 328 in more detail in the rest of this module.

The Key Management Personnel List, or KMP list, is a list of individuals in key management positions. This may include board of directors, officers such as CEO or CFO, executive personnel, general partners, regents, trustees, or senior management officials.

DCSA evaluates the company's governance and incorporation documents to determine if there is foreign ownership or control. Such documents may include the articles of incorporation, corporate bylaws, loan agreements, purchase agreements, letters of intent, and other documents related to the formation or governance of the organization.

DCSA will examine the company's filings with the Securities and Exchange Commission, or SEC. These forms may include Forms 10-K, 13D, or 13G. DCSA may also require other financial reports. Some of this information can be gleaned from the SEC Electronic Data Gathering, Analysis, and Retrieval system, known as EDGAR. What cannot be found in EDGAR must be provided by the company.

The corporate family tree outlines the company's structure, including subsidiaries and parent companies.

The company will be required to submit any documentation related to financial dependence on or obligation to foreign entities, or financial arrangements with foreign entities. An example would be a loan agreement.

DCSA may use the company's website to gain information such as business structure, operations, owners, board of directors, or press releases.

The SF 328

The SF 328—the Certificate Pertaining to Foreign Interests—is a 10-question survey designed to help identify the presence of FOCI in an organization. This form provides the structure around which the analysis process is organized. Each of the 10 questions requires a yes or no answer. Any "yes" answer requires that additional information or documents be included with the form. The form will be completed online using the designated System of Record. The remainder of this module will help you understand each question in more detail, so that you will be able to complete the form accurately and know what documentation to include if the answer to a question regarding your company is "yes."

SF 328 - Question 1

The first question of the SF 328 asks about foreign ownership of the organization. This question needs to be answered differently depending on the nature of the organization, and therefore there are two sub-questions. Question 1-A pertains to companies that issue stock, such as a corporation. If any foreign entity owns 5 percent or more of the company's stock, the question should be answered "yes" and the following documents should be submitted with the SF 328:

- The percentage of stock, securities, or capital commitment broken down by country of the foreign owner. The type of stock or securities owned should also be identified, e.g., preferred and/or common stock.
- Any shareholder agreements.
- Indication of whether SEC Schedule 13D or 13G has been received from the foreign owner.

For publicly traded companies, the SEC Schedule 13G or 13D discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquires a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition. Schedule 13G is an abbreviated version of 13D.

Question 1-B pertains to companies that do not issue stock. These organizations may still have capital investment from a foreign entity. If a foreign entity has, directly or indirectly, provided 5 percent or more of the company's total capital commitment, the question should be answered "yes" and the following should be submitted:

- Identification of the percentage of total capital commitment subscribed.
- A copy of the agreement with the subscriber. If no written agreement exists, be sure to state that.

SF 328 - Question 2

Question 2 asks about the company's ownership of foreign interests through stock or other corporate ownership. “Ownership” includes direct ownership by the company, or indirect ownership through the company's subsidiaries or affiliates. If the company owns 10 percent or more of any foreign interest, the question should be answered "yes", and the following should be submitted with the form:

- Identification of the company's foreign interests, including their names, countries, percentages owned, and any of the company's personnel who occupy management positions in the foreign firms.
- For any personnel who have management positions, provide the name, title, and extent of the individual's involvement in operations of both the company and the foreign entity, including access to classified information.

SF 328 - Question 3

Question 3 pertains to the company's governing members. If KMPs in the organization are not U.S. citizens, this could create a potential security risk. If any members of the board of directors, officers, executive personnel, partners, regents, trustees, or senior management officials are not U.S. citizens, answer "yes" to the question and submit a list of foreign KMPs. This list should include the name, title, citizenship, immigration status, and clearance or exclusion status of each.

SF 328 - Question 4

Like Question 3, Question 4 pertains to the personnel who make key decisions in the company. The difference is that Question 4 asks about foreign persons who have more indirect influence over the company's direction or decisions, such as the ability to appoint or elect key management personnel. If a foreign entity has the ability to influence the appointment of key decision makers, that influence could be leveraged in exchange for favors, potentially including the release of classified information. For this reason, any foreign persons that have the ability to control the election or appointment of key management personnel need to be identified. Remember from Module 1 that this applies even if that power has never been exercised, and whether or not it is exercisable through the ownership of securities, contractual arrangements, or any other means. It is also necessary to identify foreign entities who are not members of the governing body or management, but have the power to control the direction or decisions of the organization. If any foreign person has the power to influence the appointment of key decision makers, Question 4 should be answered "yes", and the identities of the influential foreign persons - including their names, titles, citizenship, and the nature of their control or influence in the company should be submitted for each.

SF 328 - Question 5

The fifth question asks about the existence of contracts or agreements with foreign persons. While it is common to have contracts for work with foreign entities, companies often forget that leases and other such agreements fall into this category as well. If such contracts or agreements exist, then Question 5 should be answered "yes", and the following information should be submitted for each:

- The name and country of the person or organization with whom the contract is entered.
- The percentage of gross income derived from the contract or agreement.
- The nature of involvement for the contract, including whether it is nuclear-or defense-related, whether it involves classified or export-controlled technology, and whether it complies with export control requirements.

In cases where the company has a large number of such involvements, which are not defense-—or nuclear-—related and which represent a small percentage of gross income, the explanation submitted can be a general statement that simply addresses totals sorted by country. Most contractors have many clients, and the idea of determining which ones are foreign persons can be daunting. DCSA does not require the contractor to ask every client whether he or she falls within that category. Instead, ongoing security training should be provided to those individuals that negotiate contracts so that they can identify such persons at the time of negotiation. Contracting individuals should also be briefed on their responsibilities to report agreements with a foreign person to the best of their knowledge. The answer to Question 5 is certified by the contractor to be "to the best of his or her knowledge" or "through his or her best efforts."

FSO Jim states “Wow. Our company works with multiple organizations around the world, so I immediately thought of the contracts for work that we have with foreign companies. But I didn't even consider the lease agreement for our office in Istanbul! I'll have to check with our contracts department and see what other contracts and agreements we might have in place that aren't contracts for work.”

SF 328 - Question 6

Question 6 asks about an organization's indebtedness to any foreign entity-debts that could be used as leverage to gain access to classified information. Debts may be liabilities, loans, or obligations to another person or organization. A company may be indebted as a borrower (meaning the company has borrowed money), or as surety or guarantor (meaning the company agrees to be liable for the debt of another entity if that entity fails to pay). If any portion of a company's indebtedness is to a foreign person, Question 6 should be answered "yes" and the following should be submitted:

- The company's overall debt-to-equity ratio, which shows the extent to which the company's equity can be used to cushion a creditors' claims in the event that the company is liquidated
- To what foreign persons the company is indebted
- What collateral the company provided in exchange for the loan, as well as any other conditions of the loan agreement

- Copies of the loan agreement if stocks or assets were furnished as collateral
- Details of any loan payments in default
- Specifics of convertible debentures (Convertible debentures are bonds which the holder can exchange for shares of voting stock).

SF 328 - Question 7

Question 7 pertains to the amount of revenue an organization derived from foreign entities in the last fiscal year. There are two situations in which the revenue from foreign entities could be considered FOCI; if the sum of all revenue or net income from foreign persons is 30 percent or more of the company's total revenue or net income, or if 5 percent of the company's revenues come from a single foreign person. The situations are listed as two subquestions on the form and need to be answered "yes" or "no" individually. However, the same information needs to be submitted for a "yes" answer in either case:

- Indicate the overall percentage of income derived from foreign sources, listed by country.
- Include the types of agreements, contracts, or arrangements, and the types of services or products, by which the revenue is derived.
- Indicate if any single foreign source provides 5 percent or more of the company's total revenues or net income.
- Indicate whether classified information is used in the projects that provide this revenue.
- State whether the facility is in compliance with applicable export control requirements.

SF 328 - Question 8

In some cases, shares of stock or bond certificates can be registered in the name of someone other than the actual owner. When the share is registered to a brokerage firm, these securities are said to be held in street names. If the security is registered to an individual who is not the owner, these are called nominee shares. In either case, the security carries the risk of FOCI because the owner is unidentified, meaning the owner is potentially a foreign person. As noted before, ownership of a company's stock could provide leverage for a foreign person to gain access to classified information. If the shares are voting stock, then the owner of the shares has the ability to influence decisions and the direction of the company, also putting the company at risk of FOCI. If 10 percent or more of a company's voting stock is held in nominee shares, street names, or another method that does not identify the beneficiary owner, then that company is at risk for FOCI. Question 8 should be answered "yes" and the following information should be submitted with the SF 328:

- Identification, to the best of the company's ability, of the foreign institutional owner holding 10 percent or more of the voting stock
- Indication of whether an investor has attempted to exert or has exerted any control or influence over appointments to management positions or influenced the policies of the organization
- Copies of SEC Schedules 13D or 13G

SF 328 - Question 9

Question 9 pertains to officers and directors and their role outside of the organization.

If officers, directors, or members of the governing body also hold positions or serve as consultants for any foreign entity, there is a risk of foreign influence. If this is the case, the answer to Question 9 is "yes" and the following information must be provided:

- The name, title, citizenship, immigration, and clearance or exclusion status on all such persons
- The name and address of each foreign organization with which such persons serve
- The capacity in which such persons serve

SF 328 - Question 10

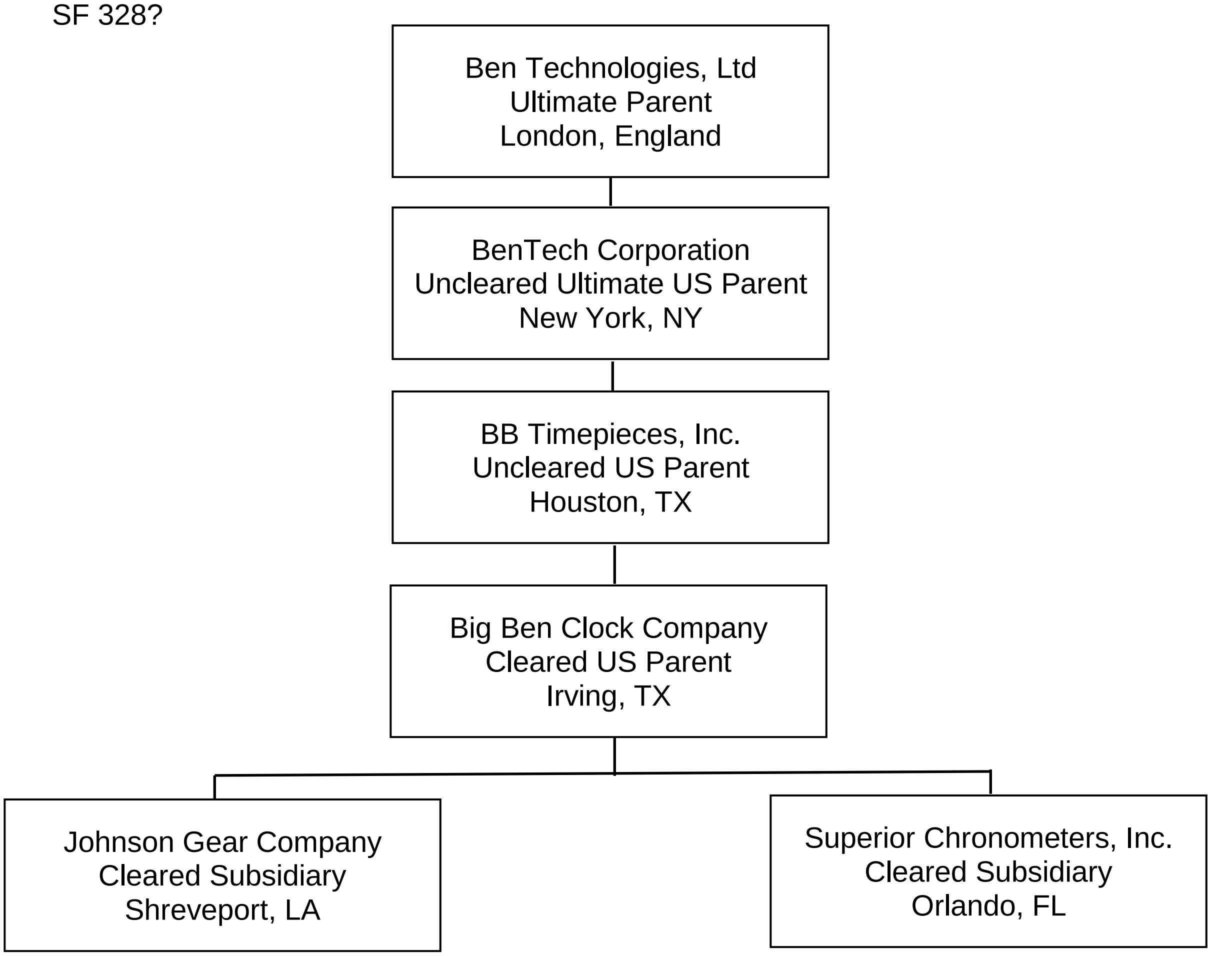
As today's business environment changes, so must security measures. While the SF 328 aims to be comprehensive, it is plausible that other means of exerting influence or control not covered in the SF 328 may appear in the business landscape. Question 10 follows from this possibility. Any capability to influence or control company decisions that has not been identified in the previous questions should be identified in the answer to Question 10. The answer should also include the reason the said involvement was not reportable in the previous questions.

Who Submits the SF 328

Today's business structures can be quite complex. Between parent companies, subsidiaries, and divisions, who is supposed to submit the SF 328? The SF 328 is submitted by the highest-tiered cleared legal entity in the corporate family. When submitting, this entity includes information for all lower-tiered cleared subsidiaries. If uncleared U.S. parent companies exist above the cleared facility, the highest-tiered uncleared U.S. parent must submit the consolidated SF 328 for all U.S. tiers above the cleared facility.

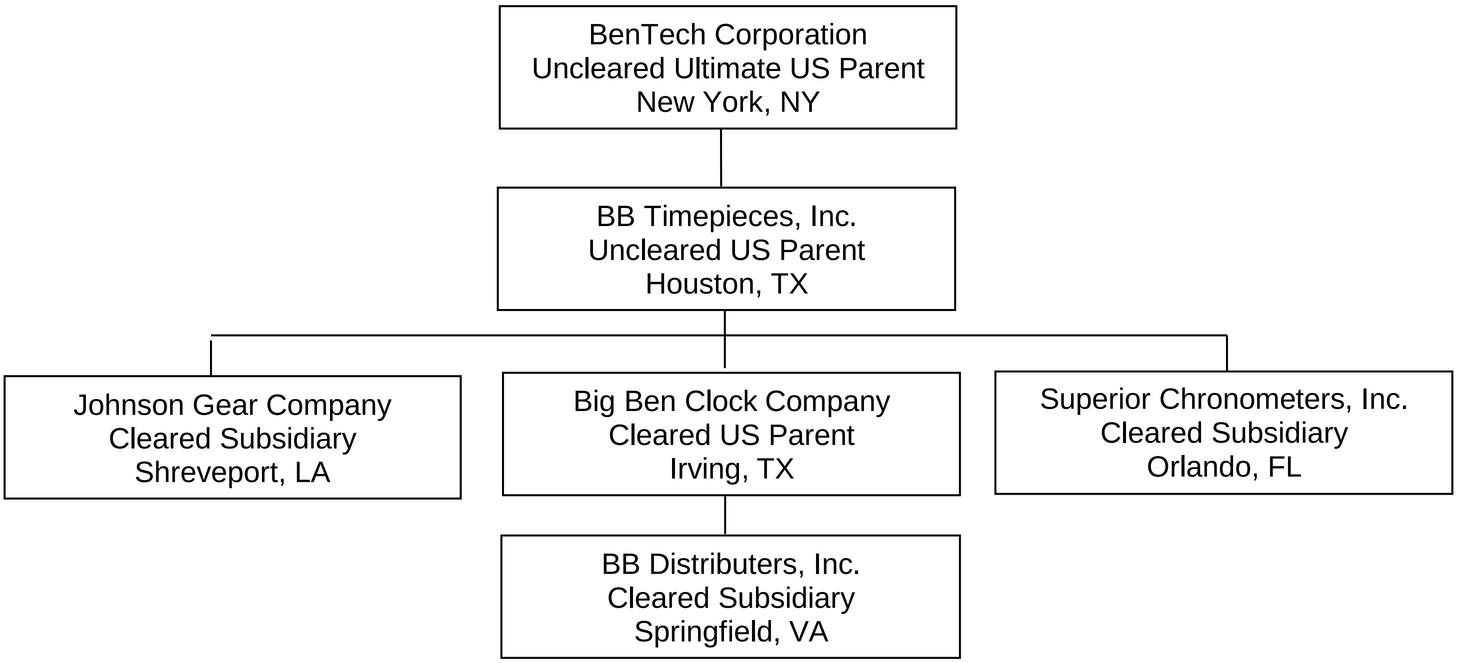
Submitting the SF 328 – Example 1

Look at this business structure diagram. Which entity or entities needs to submit an SF 328?



Submitting the SF 328 - Example 2

Which entity or entities need to submit SF 328 in this example?



Learning Activity

Select the best term from the box below to complete each sentence.

1. There are_________FOCI factors by which the nature and extent of FOCI are analyzed.
2. The SF 328 consists of_________questions which must be answered.
3. A_________answer to any questions of the SF 328 requires provision of additional information.
4. Question_________identifies whether a company is owned, in whole or in part, by a foreign individual.
5. Nominee shares do not identify the_________owner of the shares.
6. Any role for a foreign entity held by_________must be identified in question 9.
7. The highest-tiered_________ U.S. parent company submits the consolidated SF 328 for all U.S. tiers above the highest-tiered ______facility.

Beneficiary	Seven	Ten	Officers or Directors
“Yes”	One	Uncleared	Cleared

Module 3 Summary

As we mentioned previously, there are seven factors that identify FOCI. They are:

- Any record of espionage against U.S. economic and Government targets
- Any record of engagement in unauthorized technology transfer
- The type and sensitivity of information requiring protection
- The source, nature, and extent of the FOCI
- A record of compliance with U.S. laws, regulations, and contracts
- The nature of bilateral and multilateral security and information exchange
- Ownership or control (in whole or in part) by a foreign government

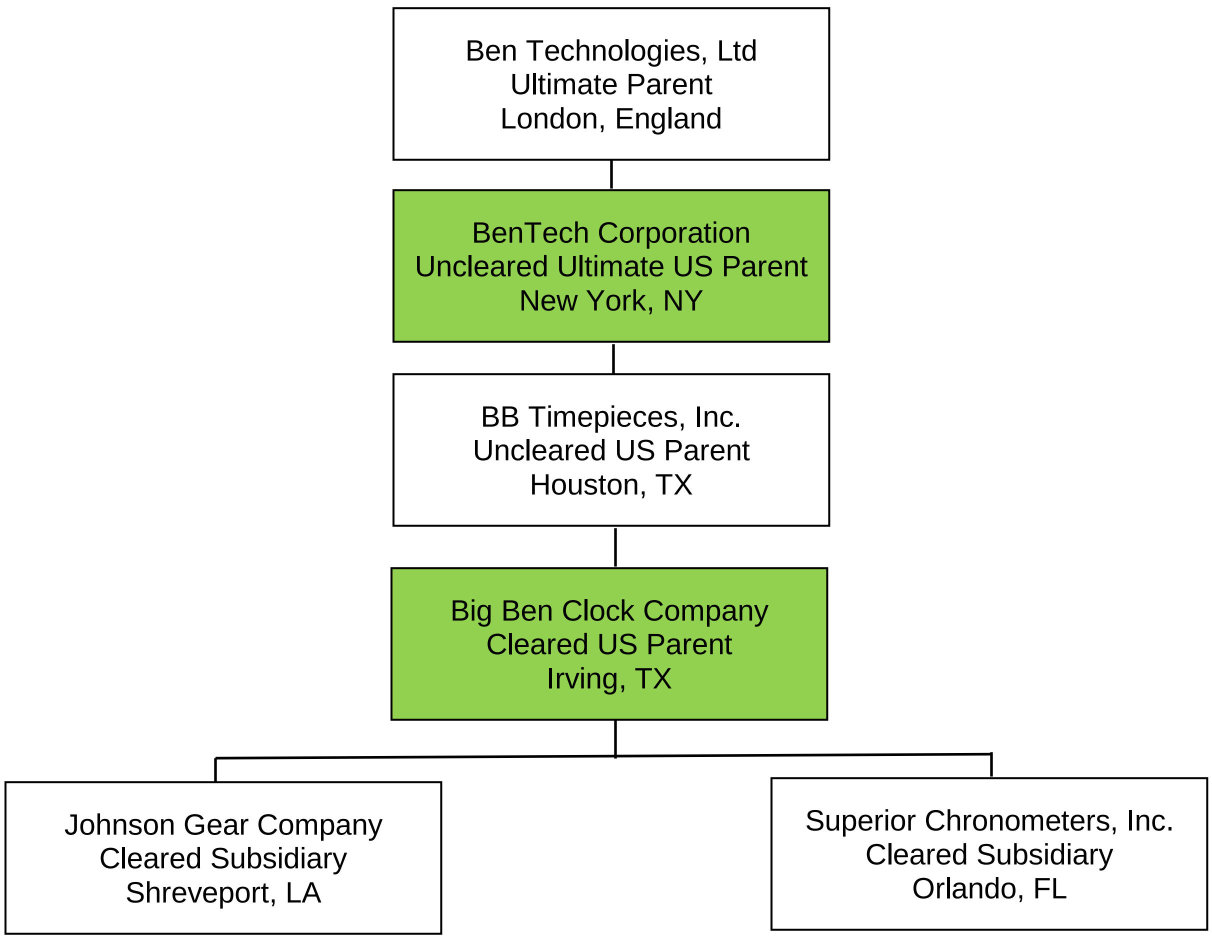
These FOCI factors are identified using some of the following documents and sources:

- The SF 328
- Key Management Personnel (KMP)
- Governing and incorporation documents
- SEC filings
- The corporate family tree
- Financial documentation
- Company websites

The SF 328-the Certificate Pertaining to Foreign Interests-is a 10-question survey which provides the structure around which the analysis process is organized. The form is made up of yes or no questions. A "yes" answer to any question will require specific additional information to be supplied to DCSA.

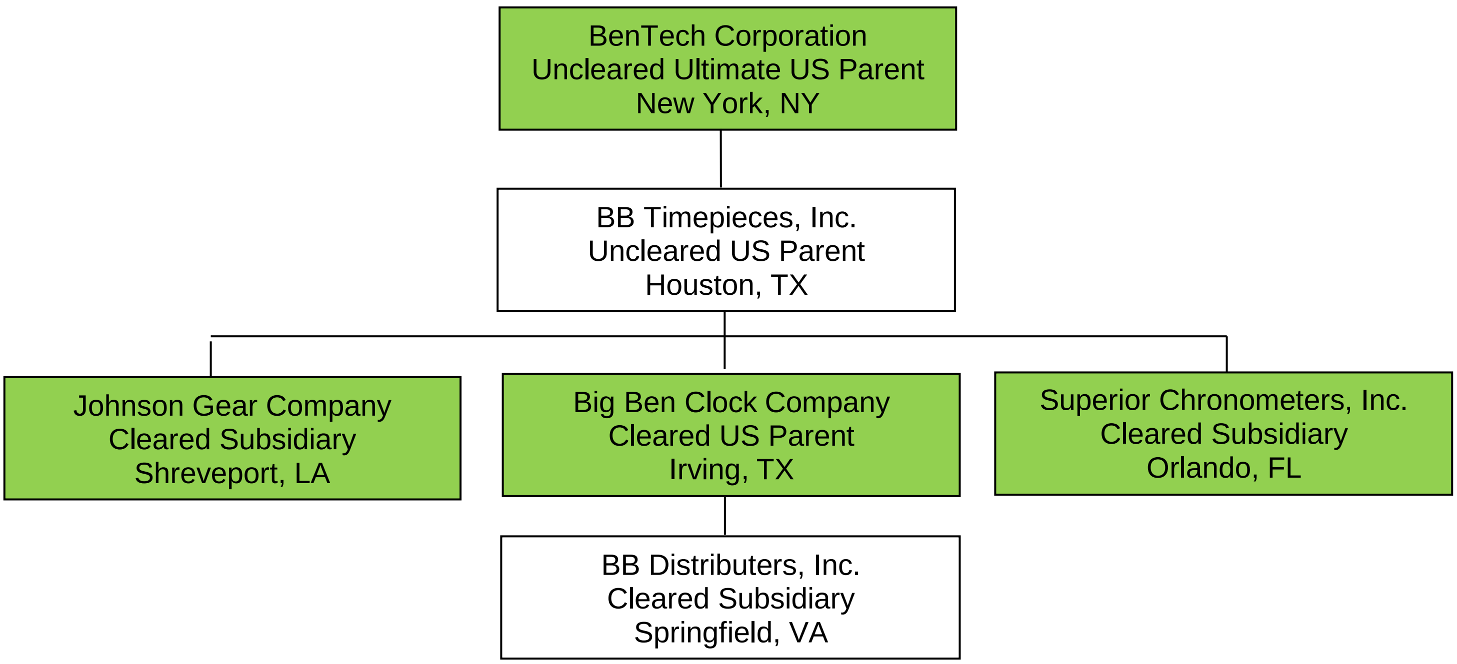
Learning Activity Answer Key

Submitting the SF 328 – Example 1
The entities highlighted in green need to submit an SF 328.



In this scenario, Big Ben Clock Company is the highest cleared entity in the ownership chain. It submits the SF 328 for any lower-tiered cleared subsidiaries, which in this example includes Johnson Gear Company and Superior Chronometers, Inc. As the highest-tiered uncleared U.S. parent company, BenTech Corporation would submit a consolidated SF 328 for all U.S. tiers above Big Ben Clock Company.

Submitting the SF 328 – Example 2
The entities highlighted in green need to submit an SF 328.



In this scenario Johnson Gear Company, Big Ben Clock Company, and Superior Chronometers Incorporated are all the highest-tiered cleared facilities. Since they are all on the same level within the business structure, they are considered "sister companies", and each is required to submit a separate SF 328. In addition, and like the previous example, BenTech Corporation will submit the SF 328 for itself and BB Timepieces, Inc, the uncleared parents above the highest-tiered cleared facilities. BenTech Corporation would then consolidate the SF 328s from each company into one package.

Learning Activity

Answers are underlined and highlighted in green below.

1. There are seven FOCI factors by which the nature and extent of FOCI are analyzed.
2. The SF 328 consists of ten questions which must be answered.
3. A "Yes" answer to any questions of the SF 328 requires provision of additional information.
4. Question One identifies whether a company is owned, in whole or in part, by a foreign individual.
5. Nominee shares do not identify the Beneficiary owner of the shares.
6. Any role for a foreign entity held by Officers or Directors must be identified in question 9.
7. The highest-tiered Uncleared U.S. parent company submits the consolidated SF 328 for all U.S. tiers above the highest-tiered Cleared facility.

Module 4: Adjudicating FOCI

This module gives an overview of the adjudication process DCSA uses to determine the security measures and restrictions that should be put in place to mitigate the effect of FOCI.

Module 4 Objectives

- Describe SF 328 adjudication processing.
- Describe FOCI adjudication issues and activities that occur at the local level.
- Describe FOCI adjudication issues and activities that occur at the headquarters level.

Reviewing the Case File

The Adjudication phase begins at the Field Office. Once the SF 328 and accompanying documentation are entered into the designated System of Record, the IS Rep reviews the information and conducts a preliminary analysis of the FOCI information.

During this preliminary analysis, the IS Rep confirms that all documents are complete, reviews the governing documents, ensures the proper Key Management Personnel, or KMPs, are being cleared, excluded parent packages are complete, if applicable, and confirms that entries are correct and complete in the designated System of Record..

The completion of this review begins a collaborative effort within DCSA that may involve the Field Office and Headquarters.

Because of his or her familiarity with the facility, the IS Rep is informed of any actions taken involving the company during the Adjudication process.

Transferring the Case File

Once the IS Rep has ensured that the case file is complete, he or she forwards the case to the Field Office Chief, or FOC, to review completeness.

The completed case file is then reviewed by the FOCI Division.

Analyzing the Case for FOCI

As part of its review, the FOCI Division determines what the next steps should be. Depending on the affirmative response(s) (or lack thereof) on the SF-328, and the seven FOCI factors, the FOCI Division completes a FOCI assessment recommending the appropriate FOCI action plan or suggests no further adjudication is necessary.

The FOCI Division will supply a written assessment to the FOC and IS Rep outlining its conclusion.

If a FOCI action plan is necessary, the FOCI Division recommends a mitigation instrument.

If a FOCI action plan is not necessary, the FOCI Division will either notify the Field Office to locally adjudicate the case, or advise the Field Office that no action is required.

Learning Activity 1

If a FOCI action plan is necessary, the __________________ recommends a mitigation instrument:

a. Field Office

b. FOCI Division

c. IS Rep

d. FSO

See the Answer Key at the end of this Module for the correct answer.

FOCI Adjudication

After the FOCI Division completes its review of the case, the actual adjudication may be performed at either the Local Field Office or DCSA Headquarters, depending on the significance of the FOCI. Cases with no significant FOCI issues are passed down to the Field Office. Complex FOCI cases are adjudicated at the HQ, or headquarters, level. Let's examine the adjudication at each level in more detail.

FOCI Adjudication – Local Level

If the case does not contain any FOCI, or the FOCI can be locally adjudicated, the case will remain with the FOC at the Field Office with the FOCI Division being notified. The FOCI that can generally be locally adjudicated typically involves foreign revenue, minimal foreign debt, company investment in foreign companies, and KMP representation on foreign boards. For local adjudications, the IS Rep, in conjunction with the FOC, will receive a FOCI Assessment from the FOCI Division and will then determine appropriate security countermeasures when necessary. The Field Office will complete the adjudication and notify the company of the results.

FOCI Adjudication – HQ Level

The FOCI Division conducts the adjudication on cases that it determines have significant FOCI issues. Significant FOCI issues may involve foreign ownership, control and/or indebtedness. The Headquarters FOCI Action Officer (FOCI Division member) is responsible for implementing the mitigation instrument. During the adjudication, the Headquarters FOCI Action Officer works directly with the company, but also copies the IS Rep and Region Senior Action Officer on significant correspondence. The FOCI Division determines the appropriate FOCI action plan and mitigation tools, and communicates this to the IS Rep and the company.

IS Rep Commentary

IS Rep Pam states, "Okay, great. Yes, thanks very much. [sound of a phone hanging up] Well, it looks like they determined ABC, Incorporated's case needs to be adjudicated at the headquarters-level. They're going to complete the analysis at the FOCI Division and decide what to do to mitigate the FOCI at the facility. Once they decide on a plan, I'll help Jim at ABC, Incorporated understand what needs to be done before they can be granted an FCL."

Learning Activity 2

Each of the following steps describes an event that occurs in the adjudication process. Arrange the steps in the order in which they occur:

- FOCI Division makes recommendation to Field Office
- IS Rep forwards case to FOC
- FOCI Division or Field Office determines appropriate countermeasures
- IS Rep reviews information for completeness
- FOC forwards case to FOCI Division

See the Answer Key at the end of this Module for the correct answer.

Module 4 Summary

The SF 328 and accompanying documents are reviewed by the IS Rep, the FOC, and the FOCI Division. Cases with no significant FOCI issues are adjudicated at the Local Level. Cases with significant FOCI issues are adjudicated by the FOCI Division.

Learning Activity Answer Key

Learning Activity 1

If a FOCI action plan is necessary, the __________________recommends a mitigation instrument:

a. Field Office
b. FOCI Division
c. IS Rep
d. FSO

Correct Answer: b. FOCI Division

Learning Activity 2

Each of the following steps describes an event that occurs in the adjudication process. Arrange the steps in the order in which they occur:

- FOCI Division makes recommendation to Field Office

- IS Rep forwards case to FOC
- FOCI Division or Field Office determines appropriate countermeasures
- IS Rep reviews information for completeness
- FOC forwards case to FOCI Division

Answer:

1. IS Rep reviews information for completeness
2. IS Rep forwards case to FOC
3. FOC forwards case to FOCI Division
4. FOCI Division makes recommendation to Field Office
5. FOCI Division or Field Office determines appropriate countermeasures

Module 5: Mitigating FOCI

Once the case has been adjudicated and the proper mitigation instrument or agreement has been determined, it is then up to the company to implement the necessary security measures.

The type of mitigation instrument used depends somewhat upon the level at which the FOCI was adjudicated.

In this module, you learn about the different types of FOCI action plans that may be applied to a contractor.

Module 5 Objectives

- Identify security countermeasures that may be imposed at the local level.
- Identify the FOCI action plans that may be imposed at the HQ level.
- Explain the purpose of the National Interest Determination (NID).
- Explain the purpose of the Limited Facility Clearance (Limited FCL).

Field Office Level Mitigation

You will recall from Module 4 that cases adjudicated at the Field Office level have no significant FOCI issues. Therefore, the countermeasures that are applied to these cases do not impose restrictions as severe as the others.

Such countermeasures may include:

- Technology Control Plan, or TCP
- Electronic Communications Plan, or ECP
- Security Education
- Threat Briefings
- Letter from the company's management
- KMP Exclusion Resolution

Technology Control Plan (TCP)

A Technology Control Plan, or TCP, is a document that describes all security measures in place to prevent unauthorized access to classified information and controlled unclassified information, such as export-controlled information. The TCP should address physical access to the buildings and restricted areas, as well as technical access to data networks and servers. When developing the TCP, the IS Rep, the Information Systems Security Professional (ISSP) and the Counterintelligence Office Representative, may visit the facility to ensure that the TCP addresses the environment adequately.

Electronic Communications Plan (ECP)

An Electronic Communications Plan, or ECP, puts in place policies and procedures regarding effective oversight of communications. This includes all media, such as telephones, teleconference, video conferences, facsimiles, cell phones, PDAs, and all other computer communication, including emails and server access. It applies to communications between contractor personnel, parents and affiliates, and subsidiaries. The ECP is designed to deter and detect influence by the foreign owner, and unauthorized attempts to gain access to classified or controlled information.

Security Education

In addition to policies and procedures, the Field Office may require the employees and security staff to receive additional training related to classified information.

Threat Briefings

The Counterintelligence Office Representative and IS Reps will work together to provide the company with annual threat briefings.

Letter from Management

DCSA may require a letter from the company's management stating that they understand that they are required to report changes in the status of their debts, income, or management personnel.

KMP Exclusion Resolution

A KMP Exclusion Resolution is a resolution adopted by the company's governing body in which it agrees to exclude from access to classified information those officers or directors who also serve on the board of the parent organization.

HQ Level Mitigation

The Headquarters Office has the ability to impose any of the countermeasures available to the Field Office. However, cases that are adjudicated at the Headquarters Level have significant FOCI issues. Therefore, they require more stringent security restrictions. There are five FOCI action plans that can be imposed by the Headquarters level, listed here in order from the least restrictive to the most restrictive:

- Board Resolution, or BR
- Security Control Agreement, or SCA
- Special Security Agreement, or SSA
- Proxy Agreement, or PA
- Voting Trust Agreement, or VTA

Board Resolutions (BR)

A Board Resolution is a legally binding document from the organization's governing board acknowledging the foreign investors identified from the first phase of the FOCI process.

This resolution denies such investors access to classified or controlled information. It also denies these investors any influence or control over projects in which classified information is involved.

Board resolutions are adequate in cases where the foreign investor has a minority stake in the company, is not a member of the governing board, and has no right to appoint or elect a member of the board. Board Resolutions may also require the company to implement a TCP that includes restricting access to classified information to keep it from any foreign stakeholders.

Security Control Agreement (SCA)

A Security Control Agreement, or SCA, is the minimum level of mitigation that is imposed if a foreign shareholder is a member of the governing body, or has the right to representation on the governing body.

In an SCA, the security measures imposed are limited. The foreign owner still maintains his or her voice in the management of the business through an Inside Director, but is denied access to classified or controlled unclassified information.

An SCA is typically imposed in the case of minority foreign ownership, or in the case in which the foreign owner does not effectively own or control the business, but is entitled to representation on the board.

An SCA requires the implementation of a TCP and at least one Outside Director.

An outside director is a cleared U.S. citizen with no prior involvement with the company, affiliates, or foreign owners who acts on behalf of the U.S. Government.

An SCA also requires a Government Security Committee, or GSC, which is a permanent subcommittee of the board of directors made up of the Outside Director and any directors that hold personnel security clearances. SCAs may also require the implementation of an ECP.

Special Security Agreement (SSA)

Special Security Agreements, or SSAs, are currently the most common method for mitigating foreign ownership or control.

An SSA is the minimum security agreement that may be imposed in cases of majority foreign ownership, and thus has more security restrictions than an SCA.

However, the SSA does still allow the foreign owner to have a voice in the business management through an Inside Director. An SSA also requires more Outside Directors than Inside Directors. These Outside Directors act on behalf of the U.S. Government.

In some cases, DCSA may approve Limited Shared Administrative Services with the foreign parent services such as health insurance benefits, retirement plans, and payroll services.

An SSA also requires a Technology Control Plan, an Electronic Communications Plan, and a Visitation Policy.

National Interest Determination (NID)

If a company operating under an SSA requires access to proscribed information, DCSA may also require a National Interest Determination, or NID.

Proscribed information includes Top Secret information, COMSEC information except Controlled Cryptographic Items when either un-keyed or used with unclassified keys, (NSA must provide approval for access to COMSEC whether the COMSEC is proscribed information or not), Restricted Data (RD), Special Access Program (SAP) information, and Sensitive Compartmented Information (SCI).

A NID is a written statement by the Government Contracting Activity, or GCA, affirming that the release of proscribed information to the company will not harm the national security interests of the United States.

The NID may be program-, project-, or contract-specific and must be prepared by the GCA. When DCSA determines that an SSA will be implemented to mitigate FOCI, it will alert the GCA that a NID needs to be completed. DCSA will not delay the implementation of the SSA, provided there is no indication that the NID will be denied. If the company opts not to obtain a NID, they may choose to be placed under a Proxy Agreement.

A new NID must be obtained if the program, project, or contract changes. For facilities in process for a new Facility Security Clearance, or FCL, DCSA will not grant the FCL until the NID has been obtained.

Proxy Agreement (PA)

When DCSA imposes a Proxy Agreement, or PA, as the FOCI action plan, the foreign owner maintains ownership of the company but relinquishes most of his or her rights of ownership.

Specifically, all voting rights are relinquished and transferred to individuals who have no prior involvement with the foreign owner or the company.

These individuals are similar to the Outside Directors, but in this case are referred to as Proxy Holders. A Proxy Agreement requires a minimum of three Proxy Holders.

The Proxy Agreement is significantly more restrictive than the previously discussed mitigation agreements. If the company is a subsidiary of a foreign company, it must be financially independent from its parent or affiliates, and usually may not share administrative services such as health benefits, retirement plans, HR services, and payroll services.

The facility being cleared may not be collocated with the foreign parent or affiliates without DCSA approval. Facilities operating under a PA will be required to submit a TCP, an ECP, and a Visitation Policy. The facility will also be required to establish a GSC.

Voting Trust Agreement (VTA)

A Voting Trust Agreement, or VTA, is the most restrictive agreement in terms of the security measures imposed on the facility applying for an FCL.

A VTA is similar in effect to a PA. However, not only does the foreign owner transfer voting rights, but also the actual ownership of the company, rather than the controlling interest.

The individuals to which ownership is transferred are referred to as Voting Trustees and must be approved by the U.S. Government.

A VTA requires at least three Voting Trustees.

The facility must be financially independent from, and cannot be collocated with, any foreign parent or affiliate.

Shared Administrative Services will not normally be approved in the case of a VTA. Facilities operating under a VTA will be required to submit a TCP, an ECP, and a Visitation Policy.

Limited Facility Clearance (Limited FCL)

In some majority-ownership cases, evaluation of the FOCI factors may determine that no FOCI action plan will be sufficient to mitigate the risk to classified information. Other times, the facility will not agree to the determined FOCI action plan.

In these cases, either the facility is denied an FCL or it may be processed for a Limited Facility Security Clearance, referred to as a Limited FCL.

A Limited FCL grants the facility the right to obtain specific information related to a program, project, or contract. It may be granted to foreign-owned companies when:

- There is an Industrial Security Agreement with the country of ownership that allows foreign-owned U.S. companies to be considered for an FCL
- The release of classified information to the company is in conformity with U.S. National Disclosure Policy
- The GCA provides DCSA with a letter of compelling need

When a facility is granted a Limited FCL, the FOCI is not mitigated, and access limitations apply to all employees, regardless of citizenship.

Learning Activity

Match the following items.

A	National Interest Determination	1.	Addresses physical access and technical access to restricted information
B	Technology Control Plan	2.	Oversight of telephones, cell phones, emails, and faxes
C	Electronic Communications Plan	3.	Security interests of United States will not be harmed by release of proscribed information
D	Voting Trust Agreement	4.	FOCI is not mitigated, but specific controlled information may be released
E	Board Resolution	5.	Legally binding document from the organization's governing board acknowledging the foreign investors and denying them access to classified or controlled information
F	Limited Facility Security Clearance	6.	Most restrictive FOCI action plan

See the Answer Key at the end of this Module for the correct answer.

Module 5 Summary

Different FOCI mitigations are imposed depending on the level at which the FOCI case was adjudicated. The Field Office may impose any of the following countermeasures:

- Technology Control Plan, or TCP
- Electronic Communications Plan, or ECP
- Security education
- Annual threat briefings or tailored threat briefings
- Requested letter from management acknowledging security requirements
- KMP Exclusion Resolution

Headquarters may impose any of the following action plans, in order from least restrictive to most restrictive:

- Any of the options available to the Field Office
- Board Resolution, or BR
- Security Control Agreement, or SCA
- Special Security Agreement, or SSA
- Proxy Agreement, or PA
- Voting Trust Agreement, or VTA

The most common FOCI action plan is the SSA. In the case of an SSA, the GCA may be required to submit a National Interest Determination, or NID, if access to proscribed information is required. A NID states that release of proscribed information to the company will not harm the security interests of the United States. If the company opts to not obtain a NID, they can choose to be placed under a Proxy Agreement. In cases which a FOCI action plan will not be sufficient to mitigate the effect of the FOCI, the facility may still be granted a Limited Facility Security Clearance, or Limited FCL, through which specific information may be released to the company. It is important to note that in the case of a Limited FCL, the FOCI is not actually mitigated.

Learning Activity Answer Key

Match the following items.

A	National Interest Determination	1.	Addresses physical access and technical access to restricted information
B	Technology Control Plan	2.	Oversight of telephones, cell phones, emails, and faxes
C	Electronic Communications Plan	3.	Security interests of United States will not be harmed by release of proscribed information
D	Voting Trust Agreement	4.	FOCI is not mitigated, but specific controlled information may be released
E	Board Resolution	5.	Legally binding document from the organization’s governing board acknowledging the foreign investors and denying them access to classified or controlled information

F	Limited Facility Security Clearance	6.	Most restrictive FOCI action plan

Answer:

A. 3
B. 1
C. 2
D. 6
E. 5
F. 4

Module 6: Reviewing Facilities Under FOCI

Companies under FOCI have specific requirements and obligations under the FOCI action plan that include documenting their compliance and responding to noncompliance. In this module, you will learn about the meetings, reports, and reviews required annually to ensure compliance with various FOCI action plans.

You will also learn the responsibilities of the Industrial Security Representative, or IS Rep, for ensuring that the facility complies with the mitigation procedures documented in the agreement.

Module 6 Objectives

- Describe the requirements associated with the initial meeting.
- Explain the purpose of the annual compliance certification.
- Identify the annual implementation and reporting requirements for companies under different FOCI mitigation instruments.
- Explain the purpose of the annual review.
- Describe the purpose of the annual compliance meeting.

The Initial Meeting

Facilities that are implementing Security Control Agreements, Special Security Agreements, Proxy Agreements, and Voting Trust Agreements will have an initial meeting with DCSA representatives.

The meeting takes place after the language in the FOCI action plan has been approved by DCSA, but before the agreement has been signed by the company and DCSA.

The purpose of the initial meeting is to address the facility's basic obligations under the National Industrial Security Program, or NISP, and the FOCI action plan, which is being implemented to mitigate the FOCI. All the parties involved, including DCSA, the facility, and the foreign parent, can use this time to discuss any concerns or questions that remain before the agreement becomes effective.

The initial meeting may also be used to complete training briefings for Outside Directors, Proxy Holders, or Voting Trustees, if these have not already been accomplished.

Who Attends the Initial Meeting

The Headquarters FOCI Action Officer conducts the initial meeting. Other DCSA representatives include a DCSA Office of General Counsel attorney, the Field Office Chief, Region Senior Action Officer and IS Rep, as well as others depending on availability.

The company is responsible for arranging for the Outside Directors, Proxy Holders, or Voting Trustees to attend, as well as their required personnel, including:

- Company Key Management Personnel
- Government Security Committee Members
- Company counsel
- Facility Security Officer
- Technology Control Officer, or TCO
- Chief Financial Officer, who is required for Proxy Agreements and Voting Trust Agreements
- Representatives of the foreign parent, if available.

Other officers or directors who are eligible for access to classified information may also be invited.

Part 1—Outside Directors, Proxy Holders, and Voting Trustees

During Part 1 of the meeting, DCSA representatives meet with the Outside Directors, Proxy Holders, or Voting Trustees to cover their roles and responsibilities under the agreement, answer their questions regarding the agreements, and review the pertinent sections of the agreement.

Part 2—Reviewing the Agreement

During Part 2 of the initial meeting, DCSA representatives will meet with the full board. This includes members of the Government Security Committee (GSC), the foreign owner, company officers, and other employees who may benefit from the meeting.

During this portion of the meeting, the DCSA representatives will:

- Explain the purpose and intent of the agreement
- Discuss the requirements of the agreement
- Explain DCSA's role and responsibilities, including those related to the Field Office, FOCI Division, and the Counterintelligence Office
- Answer questions about the agreement and its implementation
- Provide the company with advice regarding how to develop and implement procedures and policies

Signing the Agreement

Representatives of the parent company, the facility, and the foreign owners sign multiple copies of the agreement and DCSA leadership signs on behalf of the Government.

The date on which DCSA signs becomes the effective date of the agreement. After the FOCI action plan is signed, DCSA can continue processing the FCL.

Once the agreement is signed by all parties and the FCL is granted, the DCSA Counterintelligence Office Representative and IS Rep shall provide a threat briefing to the GSC at its first quarterly meeting.

Learning Activity

When does an SCA, SSA, PA, or VTA become effective?

a. At the conclusion of the initial meeting

b. When DCSA signs on behalf of the Government

c. On the date to which all parties agree during the initial meeting

d. When the Outside Directors have completed their final document review

See the Answer Key at the end of this Module for the correct answer.

Annual Reviews

All companies that operate under an SCA, SSA, PA, or VTA are reviewed annually

Newly cleared facilities may have two reviews during their first year: typically the initial review within the first three months and the annual review before completion of one full year under the FOCI action plan.

As a general practice, DCSA conducts team reviews as part of the annual review at FOCI signatory companies.

Annual Review Criteria

A FOCI action plan applies to all cleared divisions, branch offices, and subsidiaries that are under the facility that executed the agreement. As a result, any facility within the corporate family is evaluated for compliance with the FOCI action plan.

The review looks at a variety of issues that include material changes, acts of noncompliance, and other security concerns, which are reported to the Field Office Chief (FOC) and Region Senior Action Officer through the assigned IS Rep.

Annual Review Results

The results of the annual review, including significant results from security reviews at cleared divisions, branches and subsidiaries, must be fully documented, as they will be discussed with the GSC during the Annual Compliance Meeting.

IS Rep Pam states, “I'm responsible for evaluating compliance with the requirements of the FOCI action plan for cleared facilities assigned to me. I make sure I'm familiar with the terms of the FOCI action plan so that during the review I know what to look for and what questions to ask. That way, when I document the findings, they are clear and explicit.”

Team Reviews

A FOCI team review is an extension of a standard NISPOM review, but the focus is on the facility's compliance with the FOCI instrument.

Usually, team reviews aren't separate actions from the annual reviews, but they are standard procedure for FOCI signatory companies. A FOCI signatory company is the company that signed the FOCI action plan.

This is typically the corporate or home office. Non-signatory companies, typically the branches or subsidiaries, will not normally require a team review.

Team Members

The cognizant IS Rep is the leader for the team review and conducts pre-review research for the security program. The IS Rep also provides the Region Senior Action Officer, who is responsible for the FOCI elements of the review, with the FOCI files and documents that are needed to prepare.

The IS Rep coordinates team results and the overall security program rating, leads the entrance and exit briefings, and completes the team review report. In addition to the cognizant IS Rep and the Region Senior Action Officer, team members may include a Counterintelligence Office Representative, the ISSP, and others as needed.

Team Review Activities

Before conducting the review, the cognizant IS Rep and the Region Senior Action Officer prepare by becoming thoroughly familiar with the terms of the mitigation instrument and corporate activity.

During the review, they use a variety of approaches to collect information that include interviews, records reviews, and physical walkthroughs.

Team Review Outcomes

Team reviews evaluate the level of foreign control, influence, and access at the cleared facility against the limitations defined in the FOCI action plan.

They also evaluate how effectively the mitigation tools have been implemented, including security training, TCPs, ECPs, Visitation Policies, and those that apply to Shared Administrative Services, collocation with foreign parents and affiliates, and the use of foreign-parent products in classified contracts.

Learning Activity

The purpose of the annual review is to look at which of the following issues:

a. Material changes
b. Acts of noncompliance
c. Security concerns
d. All of the above

See the Answer Key at the end of this Module for the correct answer.

Annual Reporting

Companies under FOCI action plans have annual reporting requirements that differ depending on the type of FOCI action plan. Companies under a Board Resolution are required to produce a formal document called an Annual Compliance Certification, while companies under SCAs, SSAs, PAs, and VTAs produce Annual Implementation and Compliance Reports.

Annual Compliance Certification

When a company operates under a Board Resolution, the Annual Compliance Certification verifies that the company is operating in compliance with its agreement. DCSA will accept a formal letter written by the company's Senior Management Official to the Field Office, which the company normally submits through the designated System of Record.

Annual Implementation and Compliance Reports

SCAs, SSAs, PAs, and VTAs all contain requirements for yearly reporting to DCSA through a formal document called an Annual Implementation and Compliance Report.

IS Reps request that the Chairman of the Government Security Committee submit the report in the designated System of Record at least 30 days before the Annual Compliance Meeting is scheduled to take place. The IS Rep will also request copies of the company's quarterly GSC minutes throughout the course of the year and elevate any concerns to the FOC and Region Management.

Reporting About Compliance

The company's FOCI action plan outlines the requirements for the Annual Implementation and Compliance Report.

Generally, the report must contain the specific events and activities that occurred throughout the reporting period. For example, the report should describe how the facility carried out its obligations under the agreement. It should also describe any acts of noncompliance, whether they were intentional or not, and describe the steps that the facility implemented to prevent their recurrence.

FSO Jim states, "As the FSO, I'm responsible for implementing and maintaining my facility's industrial security program. Naturally, I try to ensure that we operate within the scope of our FOCI action plan, but if an instance of noncompliance occurs, I work with management to understand what happened and to prevent it from happening again. I try to keep clear, detailed records throughout the year so that I have information at my fingertips when it's time to prepare the Annual Implementation and Compliance Report."

Learning Activity

Companies required to submit an Annual Implementation and Compliance Report must report which of the following?

a. Best practices for implementing the mitigation instrument

b. Policy guidance provided to support the mitigation instrument

c. Acts of noncompliance and steps implemented to prevent recurrence

d. List of employees currently working at the cleared facility and their roles and responsibilities

See the Answer Key at the end of this Module for the correct answer.

Annual Compliance Meeting

DCSA conducts annual compliance meetings with all companies that operate under SCAs, SSAs, PAs, and VTAs. The meeting is usually held at the highest-tier cleared company and is conducted by the Region Senior Action Officer, if available, or the cognizant IS Rep.

If the annual meeting is to be held at another cleared facility within the corporate family, the cognizant Field Office will conduct it either in person or via telephone, if in a remote location, and will coordinate with the Field Office with cognizance over the meeting facility to ensure that DCSA has a representative present.

The results of the security review and the Annual Compliance Report furnished by the GSC provide the Region Senior Action Officer and the IS Rep with the information they need to identify any questions, concerns, and items to address during the meeting.

IS Rep Pam states, "I work with the Region Senior Action Officer to prepare for annual compliance meetings for the facilities I'm responsible for monitoring. I do this for a couple of reasons. First, I may have to conduct the meeting if the Region Senior Action Officer is unable to attend, and second, I need to be aware of any issues that have developed or may need intervention to prevent."

Who Attends the Annual Compliance Meeting

In addition to the Region Senior Action Officer or IS Rep who conducts the meeting, other Government attendees may include the FOC, Counterintelligence Office Representative, ISSP, and the Headquarters FOCI Action Officer, as appropriate. A representative from the GCA may receive an invitation from the Region Senior Action Officer or IS Rep as well. Representatives from the company may include:

- The Outside Directors, Proxy Holders, or Voting Trustees
- The Board of Directors, or an equivalent body

- Company key management personnel
- The FSO
- The TCO
- The Foreign Shareholder

Part 1—Outside Directors, Proxy Holders, and Voting Trustees

During Part 1 of the annual meeting, DCSA representatives meet with the Outside Directors, Proxy Holders, or Voting Trustees to discuss:

- Security posture of the facility
- Results of the security review
- Operational security-related issues
- Responsibilities of the Outside Directors, Proxy Holders, or Voting Trustees
- General industrial security
- Other FOCI issues

Part 2—Assessment, Guidance, Results

During Part 2 of the annual meeting, the DCSA representatives meet with the expanded group of attendees to:

- Discuss compliance with board resolutions, special controls, practices, and procedures established to mitigate FOCI
- Provide an assessment of the company's security posture
- Discuss matters that pertain to acts of compliance and noncompliance with the terms of the existing FOCI action plan
- Provide guidance or assistance as needed
- Review the visit request policy and practice
- Provide a forum for the ODs/PHs/VTs to present the required annual review and compliance report

After the meeting, the IS Rep or the Region Senior Action Officer will post the results in a memorandum for record (MFR) that identifies each person attending the meeting, his or her title, the issues addressed, any issues that are still pending, and provides an analysis of the facility's compliance with the terms of the FOCI action plan.

Learning Activity

Determine whether each activity or topic is discussed during the Initial Meeting or the Annual Compliance Meeting.

a. Briefing for Outside Directors, Proxy Holders, or Voting Trustees
b. DCSA roles and responsibilities
c. Discuss compliance with the FOCI action plan
d. Provide assessment of the security posture of the company
e. Review Visitation Policy and practices
f. Answer questions about the FOCI action plan
g. Company's responsibility under the NISP and FOCI action plan
h. Review acts of noncompliance

See the Answer Key at the end of this Module for the correct answer.

Module 6 Summary

Companies under FOCI have specific requirements and obligations under their FOCI action plan that include documenting their compliance and responding to noncompliance.

Initial meetings with DCSA representatives allow all the parties to the SCA, SSA, PA, or VTA to discuss concerns, understand their roles, and clarify their understanding of the purpose and intent of the agreement before it becomes effective.

DCSA may schedule facility reviews in advance to take place approximately 60 days before the annual meeting to examine company practices under the FOCI action plan.

Newly cleared facilities typically experience both an initial review and an annual review during their first year under a FOCI action plan. DCSA performs team reviews as part of the annual review at FOCI signatory companies.

Companies provide written reports on a yearly basis before the Annual Compliance Meeting to describe how effectively policies and practices under the agreement were carried out in practice, as well as any significant personnel or organizational changes that may have occurred during the year.

Annual Compliance Meetings provide the opportunity for DCSA representatives to discuss the results of their review with the Outside Directors, Proxy Holders, or Voting Trustees, as well as company representatives.

Learning Activity Answer Key

Learning Activity 1

When does an SCA, SSA, PA, or VTA become effective?

a. At the conclusion of the initial meeting

b. When DCSA signs on behalf of the Government

c. On the date to which all parties agree during the initial meeting

d. When the Outside Directors have completed their final document review

Answer: b. When DCSA signs on behalf of the Government

Learning Activity 2
The purpose of the annual review is to look at which of the following issues:
a. Material changes
b. Acts of noncompliance
c. Security concerns
d. All of the above

Answer: d. All of the above

Learning Activity 3
Companies required to submit an Annual Implementation and Compliance Report must report which of the following?

a. Best practices for implementing the mitigation instrument

b. Policy guidance provided to support the mitigation instrument

c. Acts of noncompliance and steps implemented to prevent recurrence

d. List of employees currently working at the cleared facility and their roles and responsibilities

Answer: c. Acts of noncompliance and steps implemented to prevent recurrence

Learning Activity 4
Determine whether each activity or topic is discussed during the Initial Meeting or the Annual Compliance Meeting.

a. Briefing for Outside Directors, Proxy Holders, or Voting Trustees

b. DCSA roles and responsibilities

c. Discuss compliance with the FOCI action plan

d. Provide assessment of the security posture of the company

e. Review Visitation Policy and practices

f. Answer questions about the FOCI action plan

g. Company's responsibility under the NISP and FOCI action plan

h. Review acts of noncompliance

Answers:

Initial Meeting:

- Briefing for Outside Directors, Proxy Holders, or Voting Trustees
- DCSA roles and responsibilities
- Answer questions about the FOCI action plan
- Company's responsibility under the NISP and FOCI action plan

Annual Compliance Meeting:

- Discuss compliance with the FOCI action plan
- Review Visitation Policy and practices
- Provide assessment of the security posture of the company
- Review acts of noncompliance

Module 7: The Committee on Foreign Investment in the United States (CFIUS)

This module will introduce you to the Committee on Foreign Investment in the United States (CFIUS).

Module 7 Objectives

- Describe the main components of the CFIUS.
- Explain the purpose of the CFIUS review.

What is the Committee on Foreign Investment in the United States (CFIUS)?

The Committee on Foreign Investment in the United States, commonly referred to by its acronym CFIUS, is an interagency committee chaired by the Treasury Department. Under the CFIUS process, Executive Branch agencies review proposed mergers or acquisitions to determine whether the President of the United States will disallow the transaction in the interest of national security.

CFIUS is composed of the heads of departments and offices. Other offices observe and, as appropriate, participate in CFIUS activities.

The Director of National Intelligence and the Secretary of Labor are non-voting, ex officio members of CFIUS. Their roles are defined by statute and regulation.

Active CFIUS Members

- Department of the Treasury (chair)
- Department of Commerce
- Department of Energy
- Department of Justice
- Department of Defense
- Office of the U.S. Trade Representative
- Department of Homeland Security
- Department of State
- Office of Science and Technology Policy

Observers

- Office of Management & Budget

- Council of Economic Advisors
- National Security Council
- National Economic Council
- Homeland Security Council

Non-Voting Members

- Office of the Director of National Intelligence
- Department of Labor

The CFIUS Review

CFIUS Review is a voluntary process that affords the foreign and U.S. parties entering into a covered transaction, including mergers and acquisitions or takeovers, the opportunity to submit the transaction for review to assess its impact on U.S. national security.

CFIUS and FOCI

The CFIUS review and the FOCI process, discussed throughout this course, are separate processes subject to independent authorities with different time constraints and considerations.

DCSA is notified of CFIUS filings by the Office of the Under Secretary of Defense for Acquisitions and Sustainment (OUSD(A&S)) . DCSA evaluates transactions that pertain to facilities under its cognizance in the National Industrial Security Program to determine if the proposed FOCI mitigation plans are sufficient to mitigate the FOCI. If the FOCI process has not begun or has not been completed prior to the submission of a CFIUS notice, DCSA will conduct the FOCI process on a priority basis. DCSA will provide all relevant information through appropriate channels for any transaction undergoing concurrent CFIUS review and DCSA FOCI process.

Learning Activity

Select responses to the following:

1. Which member is the chair of CFIUS?

a. Department of Defense
b. Department of Commerce
c. Department of the Treasury
d. Department of Homeland Security

2. The CFIUS review occurs in place of the FOCI process.
a. True
b. False

See the Answer Key at the end of this Module for the correct answer.

Module 7 Summary

The CFIUS reviews transactions, such as mergers, and acquisitions or takeovers, of U.S. interests by foreign investors. The purpose of a CFIUS review is to evaluate the impact of the transaction on U.S. national security. The CFIUS review is separate from the FOCI process with different time constraints and considerations.

Learning Activity Answer Key

1. Which member is the chair of CFIUS?
   a. Department of Defense
   b. Department of Commerce
   c. Department of the Treasury
   d. Department of Homeland Security

Answer: c. Department of Treasury

2. The CFIUS Review occurs in place of the FOCI process.
   a. True
   b. False

Answer: b. False

Course Conclusion

Congratulations! You have completed the entire course on Understanding Foreign Ownership, Control or Influence. You should now be able to:

- Explain Foreign Ownership, Control, or Influence and the overall process by which DCSA mitigates the FOCI to allow a Facility Clearance,
- Describe the first step taken in the FOCI process by companies seeking a facility clearance,
- Given identified FOCI factors, show which office level would adjudicate the FOCI, and what activities would occur,
- Distinguish between FOCI mitigation action plans that may be imposed on a company by DCSA,
- Describe annual reporting and meeting requirements to ensure the company's compliance, depending on the mitigation instrument/plan,
- Explain the purpose of the Committee on Foreign Investment in the United States (CFIUS) in relation to FOCI.

To receive course credit you MUST complete the Understanding FOCI examination on the Security Training, Education, and Professionalization Portal (STEPP).