



Foreign Ownership Control and Influence (FOCI), and Foreign Ownership Compliance for Small Businesses

Presented By:

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About the Presenter

360° Viewpoint

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Government Counsel

CIA – Office of General Counsel (OGC) / Office of Security / Clearance Adjudications

U.S. Navy Civilian - OGC National Security Law / Special Programs/ NELO

U.S. Army JAG - Intelligence & National Security Law

Industry In-House Counsel

Bigs: Northrop Grumman, IBM, McKinsey & Company

Smalls/Mids: Millenium, White Oak, Merlin International, GovCio

NOW: Veteran Owned/Women Owned boutique GovCon law firm

Focus: small businesses in SOF & DIB, Intel, and Tech industries

Dispersed team across Florida: Tampa, St. Petersburg, Orlando, Ft. Lauderdale

Cleared, business-minded problem solvers with practical advice not legal diatribes.

All things GovCon: risk mitigation, compliance, internal controls, contract negotiation/administration, subcontracts, prime contracts, TAs, NDAs, contract templates, FCLs, FAR/DFARS, negotiations, license agreements, data rights, channel/reseller docs, etc.



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Roadmap



Facility Security Clearances – Steps and Lifecycle



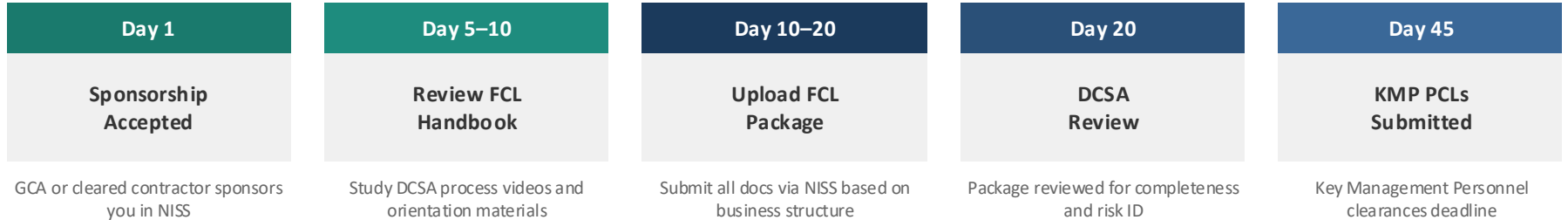
Foreign Ownership Control & Influence (FOCI)



New FOCI Considerations – Why They Matter to You

Facility Clearance (FCL) Process

If your contracts require access to classified information, you'll need an FCL from DCSA.

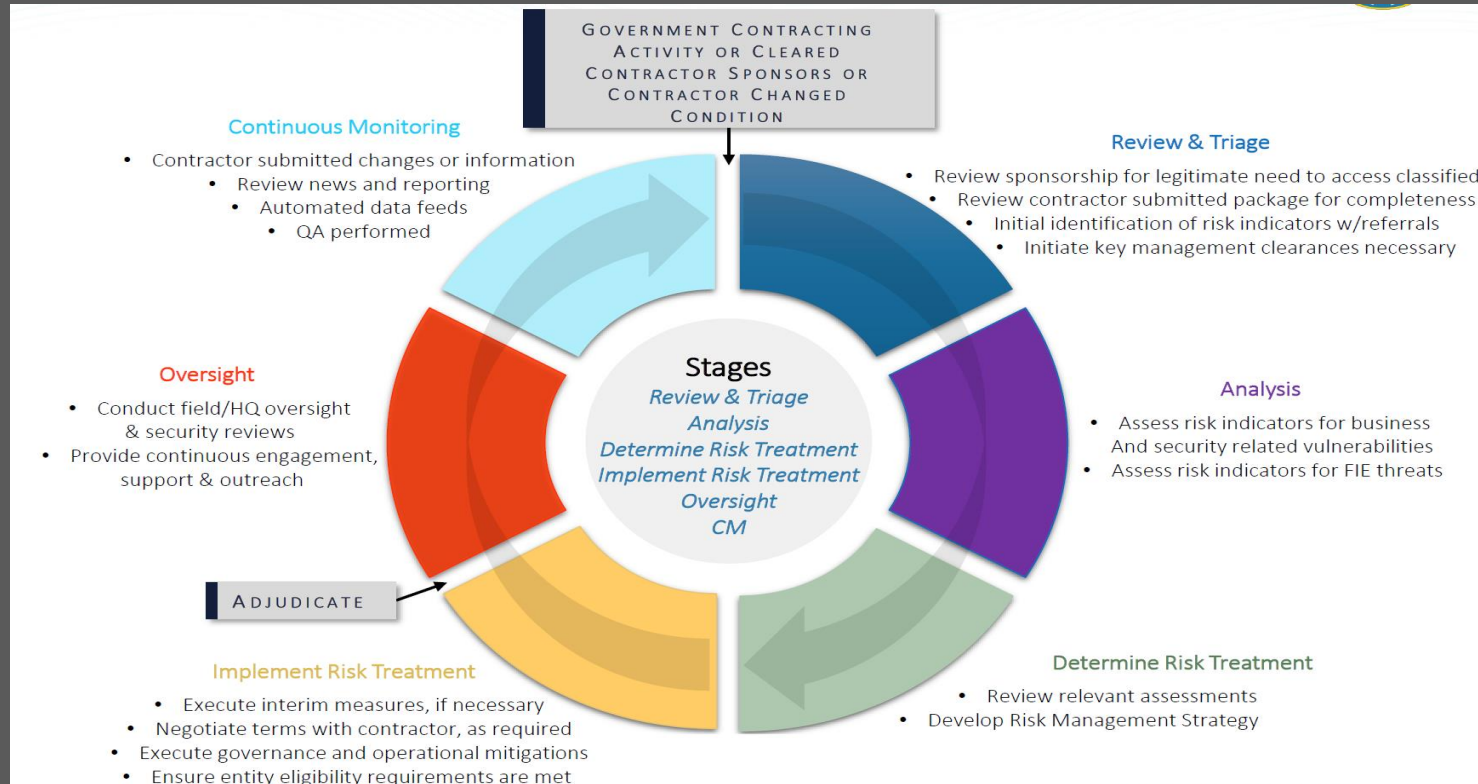


Key Eligibility Requirements (32 C.F.R. § 117.9(c))

- Legitimate need to access classified information (bona fide contract requirement)
- Organized, existing, and located in the United States
- Record of integrity and lawful conduct; not excluded from federal contracts
- Eligible Key Management Personnel (KMP) with personal clearances
- Not under FOCI to a degree inconsistent with national interest

Key Resource - FCL Orientation Handbook: www.dcsa.mil

DCSA Facility Security Clearance Lifecycle



What Is FOCI?



Foreign Ownership, Control, or Influence

A U.S. company is considered under FOCI whenever a foreign interest has the power — direct or indirect, whether or not exercised, and whether or not exercisable — to direct or decide matters affecting management or operations in a manner that may result in unauthorized access to protected information or adversely affect contract performance.

— 32 C.F.R. § 117.11(a)(1) (NISPOM)

Cause

Any foreign interest connection:
ownership, contracts, revenue,
key personnel, debt, governance
rights, or supply chain dependence

Effect

Unauthorized access to sensitive
information, or adverse impact
on contract performance and
national security



FOCI Factors: What DCSA Will Examine

32 C.F.R. § 117.11(b) — DCSA evaluates these factors for every covered contractor:



Foreign Ownership

Direct/indirect equity, beneficial ownership, 5%+ threshold per country



Key Personnel

Foreign nationals, dual citizens, or personnel with foreign affiliations in leadership



Revenue & Contracts

15%+ revenue from foreign sources; contracts, debt, or obligations to foreign entities



Governance Rights

Board seats, veto power, consent rights, or other control mechanisms held by foreign interests



Foreign Operations

Subsidiaries, branch offices, R&D labs, data centers, or supply chain dependencies abroad



Espionage & Enforcement

History of espionage targeting, tech transfer violations, or compliance enforcement actions



Bilateral Agreements

Relevant international security or information-sharing agreements



Catch-All Factor

Any other indicator of foreign capability to control or influence operations or management

Section 847: The Big Shift for Uncleared Contractors

BEFORE Section 847

- FOCI vetting only for classified contracts
- ~2,000 cases per year at DCSA
- Uncleared contractors had no FOCI disclosure obligation
- No beneficial ownership mapping required for unclassified work
- 120-day processing goal (not statutory)

AFTER Section 847

- FOCI vetting for all DoD contracts over \$5M (classified and unclassified)
- ~41,000 cases per year at DCSA
- All covered contractors must disclose beneficial ownership and FOCI pre-award
- SF-328 (revised May 2025) is the primary disclosure instrument
- 25 working-day statutory review deadline

Note: Commercial products/services under FAR 2.101 are generally excluded unless the PSA determines a risk to national security, sensitive data, or cybersecurity.

Why This Matters for Your Business Right Now

41,000

Annual FOCI reviews
under Section 847
(up from 2,000)

\$200B

In DoD acquisitions
newly subject to
FOCI vetting

25 days

DCSA review deadline
per DoDI 5205.87
(working days)

Section 847 of the FY2020 NDAA extends FOCI vetting to **unclassified** DoD contracts over \$5M — not just classified work. The DFARS rule is expected in 2026–2027. Small businesses entering the DIB must prepare now.

KEY TAKEAWAY: *Even if you don't handle classified information, you will likely need to disclose your ownership structure and any foreign connections before contract award.*

The Revised SF-328: What You Must Disclose

Standard Form 328, updated May 2025, is the primary FOCl disclosure instrument. It now covers Section 847, CMMC, and SBIR/STTR programs.

Beneficial Ownership

Trace ownership through all intermediate entities to ultimate beneficial owners.
Report any aggregated foreign ownership from a single country at 5%+.

Governance & Control

Cite specific provisions of operating agreements, bylaws, and LPAs granting foreign interests board seats, veto rights, or consent rights.

Foreign Revenue

Threshold lowered from 30% to 15% from any single country. Provide detailed breakdowns by country.

Key Personnel

Identify all officers, directors, and key managers who are foreign nationals, dual citizens, or have foreign affiliations.

Foreign Contracts & Debt

Catalog all contracts, teaming arrangements, JVs, and financial obligations to foreign entities.

Foreign Operations

Disclose all foreign subsidiaries, branch offices, R&D labs, and data processing facilities.

Incomplete submissions restart the 25-day clock in practice — invest in thoroughness upfront.

FOCI Mitigation: What Happens If You Have Foreign Ties

Under Section 847, the Contracting Officer — not DCSA — decides whether to impose mitigation. Mitigation is discretionary for unclassified contracts and assessed contract-by-contract.

Board Resolution

Least restrictive. Board certifies it will not permit foreign influence on classified or sensitive work. Suitable for minimal FOCI indicators.

Low

Security Control Agreement (SCA)

Imposes specific security controls on operations. Foreign owner retains some governance but must comply with security requirements.

Medium

Special Security Agreement (SSA)

Similar to SCA but includes a Government Security Committee with independent outside directors to oversee compliance.

High

Proxy / Voting Trust Agreement

Most restrictive. Foreign owner relinquishes all governance rights to cleared U.S. proxy holders or voting trustees.

Highest

Contractors have 90 days after award to implement required mitigation measures.

KEY TAKEAWAY: *Get way ahead of the deadline, implement these early and find partners who can help you.*

Preparing Your Business: A 5-Step Action Plan

1

Map Your Ownership

Build a complete organizational chart from your contracting entity to ultimate beneficial owners. Include all entities with 5%+ interest, governance rights, and jurisdiction of formation.

2

Inventory Foreign Touchpoints

Catalog all foreign revenue (15% country threshold), foreign key personnel, foreign contracts/JVs, foreign subsidiaries, and foreign debt or financing.

3

Review Governance Documents

Identify specific provisions in operating agreements, bylaws, LPAs that grant any foreign interest board appointment rights, veto rights, or consent rights. Cite section numbers.

4

Map Your Contract Portfolio

Identify all current and anticipated DoD contracts/subcontracts over \$5M. Determine which qualify as commercial products/services under FAR 2.101.

5

Prepare a Mock SF-328

Complete a dry-run of the revised SF-328 to identify gaps and affirmative responses. This positions you for efficient DCSA processing when the DFARS rule takes effect.

KEY TAKEAWAY: *Start now — companies that arrive at the DFARS effective date with a completed ownership map and mock SF-328 will avoid award delays and competitive disadvantage.*

Key Risks and Strategic Considerations



Competitive Weaponization

Competitors may challenge your eligibility based on your foreign ownership profile during source selection or in post-award protests.



M&A Transaction Risk

Any acquisition involving a foreign interest now triggers Section 847 obligations alongside CFIUS review. Deal teams must integrate both frameworks.



Changed-Condition Reporting

You must report ownership changes throughout contract life: new foreign investors, LP transfers, changes in foreign revenue concentration, and KMP changes.



Subcontractor Cascading

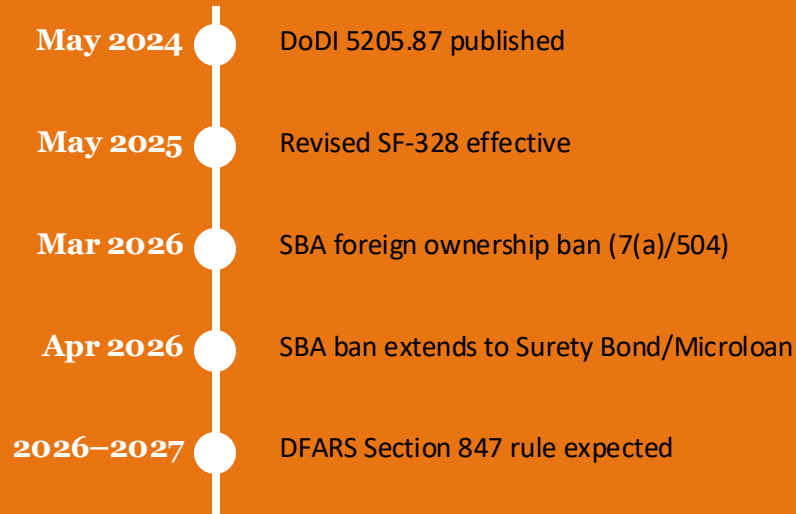
Section 847 applies to subcontractors too. Primes will need to assess and manage FOCI exposure across their supply chain on covered contracts.



CMMC Integration

The revised SF-328 is authorized for CMMC. Companies should integrate Section 847 and CMMC compliance workstreams — many of the same data points are relevant.

Timeline and Resources



Key Resources

DCSA Section 847 Page: dcsa.mil/Section847

FCL Orientation Handbook: dcsa.mil (FCL & FOCI resources)

NISS Portal: dcsa.mil/is/niss

EV Knowledge Center: 1-878-274-2000 (Opt 2, then 1) | dcsa.fcb@mail.mil