

ALERT

GAO Study Highlights Shortcomings in USDA Land Deal Information Sharing with CFIUS

January 26, 2024

On January 18, 2024, the U.S. Government Accountability Office (GAO) released a public report that found the U.S. Department of Agriculture (USDA) does not share timely data on foreign investments in agricultural land with the Committee on Foreign Investment in the United States (CFIUS). The Agricultural Foreign Investment Disclosure Act (AFIDA) requires that foreign persons and legal entities acquiring U.S. agricultural land submit a report to USDA with details of the transaction. AFIDA data may be helpful to CFIUS for analyzing national security risks in real estate transactions, such as foreign investments in agricultural land near military installations, but the report found that the AFIDA processes are flawed and the data is not provided to CFIUS in a timely manner.

The GAO report says CFIUS only receives AFIDA information from USDA once a year, suggests that USDA's system for managing AFIDA information is inefficient, and includes reports of inaccuracies in the data it reports, among other issues. The GAO report explains that once a year, USDA headquarters takes information collected from AFIDA forms and enters it into a consolidated spreadsheet, which is made publicly available in an annual report. The GAO report notes that USDA still manages AFIDA reports using paper forms, which are first reviewed by county and state officials before reaching USDA. While Congress directed the USDA to create an online submission process, the USDA lacks funding to set up this new system. The GAO also pointed out data entry errors for AFIDA information, such as double counting of transactions.

Under the Foreign Investment Risk Review Modernization Act of 2018, Congress authorized CFIUS to review the purchase, lease, or concession of certain real estate; however, USDA's role in CFIUS

Authors

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Daniel P. Brooks
Partner
202.719.4183
dbrooks@wiley.law

Paul J. Coyle
Associate
202.719.3446
pcoyle@wiley.law

Patrick Griffo
Associate
202.719.4732
pgriffo@wiley.law

Practice Areas

Committee on Foreign Investment in the United States (CFIUS)
International Trade
National Security

remains limited. CFIUS is an interagency body with members from across the federal government—including the Secretary of the Treasury, Secretaries of State, Defense, Homeland Security, Commerce, and Energy; Attorney General; U.S. Trade Representative; and Director of the Office of Science and Technology Policy—but does not include the Secretary of USDA. While USDA advises CFIUS on certain transactions and shares some information with CFIUS, USDA lacks any real-time data system for sharing national security information with government agencies.

The GAO report comes amid growing pressure from Capitol Hill to expand CFIUS’s role in reviewing purchases of farmland by foreign entities. High-profile agricultural land purchases by foreign companies near U.S. military bases have prompted members of Congress to raise concerns and consider how to limit similar transactions in the future. In April 2023, for example, the City of Grand Forks, North Dakota, terminated a development agreement with Chinese-owned Fufeng Group to build and operate a wet corn milling plant near Grand Forks Air Force Base due to national security threats. In July 2023, Representative Mike Gallagher, Chairman of the House Select Committee on the Chinese Communist Party, introduced the Protecting U.S. Farmland and Sensitive Sites From Foreign Adversaries Act, which would give the USDA Secretary a vote in CFIUS reviews of transactions that involve farmland. Notably, the proposal would also give CFIUS jurisdiction over all land purchases by foreign adversaries, with some exceptions for real estate in urban areas and single housing units. Lastly, stemming from the GAO report, Senators Braun and Tester, along with a number of other senators have drafted very recent legislation to address shortcomings in the AFIDA process.

We will continue to track legislative and regulatory developments concerning CFIUS authorities and processes as they develop. Wiley has unparalleled CFIUS and National Security practices and capabilities that leverage the expertise of our former senior U.S. government leaders and renowned professional experts with extensive experience representing domestic and international companies in complex transactions involving nearly every industry sector. Please reach out to any of the authors listed on this alert should you have any questions about CFIUS regulations governing foreign investment.