



# FOREIGN INVESTMENT IN THE U.S. FOOD AND AGRICULTURE SECTOR: SELECTED LEGISLATIVE ACTIONS AND PROPOSALS

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## Agenda

- Selected Federal Authorities
- Enacted Legislation (117<sup>th</sup> Congress)
- Introduced Legislation (117<sup>th</sup> and 118<sup>th</sup> Congress)
- Other Ongoing Actions







## Selected Federal Authorities

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- Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA; P.L. 95-460, 7 U.S.C. §§3501-3508); regulations at 7 C.F.R. Part 781
- Section 721 of the Defense Production Act of 1950 (DPA, P.L. 81-774; 50 U.S.C. §4565) governing activities of the Committee on Foreign Investment in the United States (CFIUS); regulations at 31 C.F.R. Chapter 8



## Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA)

- Requires foreign persons/entities who acquire, transfer, or hold an interest in *U.S. agricultural land* to disclose such transactions or any changes to USDA within 90-days
- Defines ***U.S. agricultural land*** as land used for “agricultural, forestry, or timber production purposes” (7 U.S.C. §3508)
- Exempts certain transactions from reporting as set in USDA regulations (based on size, annual gross receipts, and other criteria)
- Prescribes maximum civil penalties of up to 25% of the fair market value of the interest held in the land for failure to comply (7 U.S.C. §3502)
- Provides that USDA may engage in “investigative actions” (7 U.S.C. §3503)
- Establishes a nationwide system for USDA to collect and report such data to states and the public (7 U.S.C. §§3505-3506)

## Reported Shortcomings of the AFIDA Data

- Data are incomplete given omissions due to unreported purchases/transfers
- Limited ownership transparency (e.g., cannot identify ultimate beneficial owner)
- Some investors are from an “identity haven” (e.g., actual nationality is not known)
- Accuracy of disclosed data relies on voluntary compliance and self-reporting
- Practical limits of policing disclosure, given volume of annual transactions
- Possible incentive for non-reporting/anonymity to hide the extent of their investment to avoid possible federal or state action
- USDA’s database has information not included in publicly available annual reports (e.g., county where property is located)
- Nearly half of all transactions do not disclose a transaction price
- Data are not standardized, and available reports are difficult to use
- USDA lacks staff and resources to verify, monitor, and track transactions

## Section 721 of the Defense Production Act (CFIUS)

- Governs the activities of CFIUS, chaired by the U.S. Treasury
- CFIUS serves the President in overseeing the potential national security risks of certain foreign investment transactions that could result in:
  - control of U.S. businesses
  - noncontrolling investments in certain U.S. businesses involved in ***critical infrastructure*** or ***critical technologies***, and sensitive personal data
  - certain real estate transactions that meet specific criteria
- If an investment transaction is found to threaten U.S. national security, the President has the authority to block or unwind the transaction



## CFIUS and the U.S. Food and Agriculture Sector

- Currently, USDA and HHS are not members of CFIUS but may be brought in to review transactions; however:
  - CFIUS may consider review of foreign investment transactions in the food and agriculture sector (but not mandated to do so)
  - U.S. Treasury may designate USDA and HHS as co-leads in a CFIUS investigation on a case-by-case basis
  - The Cybersecurity and Infrastructure Security Agency has designated USDA and HHS as the co-Sector Risk Management Agencies for the U.S. food and agriculture sector
- President Biden has instructed CFIUS to consider “elements of the agricultural industrial base that have implications for food security” (E.O. 14083)



## Enacted Legislation (117<sup>th</sup> Congress)

## Enacted Provisions in the 117<sup>th</sup> Congress (AFIDA)

### **FY2023 Consolidated Appropriations Act (P.L. 117-328, §773)**

- Requires USDA to report on the impact of foreign investments in U.S. agricultural land on “family farms, rural communities, and the domestic food supply”
- Directs USDA to establish (within 3 years) a “streamlined process for electronic submission and retention of disclosures,” including an “internet database” with “disaggregated data from each disclosure submitted” under AFIDA

### **FY2022 Consolidated Appropriations Act (H. Comm. Print 47-047)**

- Directs USDA to report on trends including land owned or partially owned, by the governments of China, Russia, Iran, or North Korea, as well as the “potential impacts on the American agricultural sector, food security, and rural economies”
- Highlights congressional concerns about potential “threats to food security and rural economies” including by “non-farming entities, including private equity firms and foreign-owned corporations”



## Introduced Legislation (118<sup>th</sup> and 117<sup>th</sup> Congress)



## House-Passed Bills Not Enacted in the 117<sup>th</sup> Congress

### House-Passed FY2023 Appropriations (H.R. 8294, Division B, §769)

- Would have directed USDA to “take such actions” to prohibit the purchase of U.S. agricultural land by “companies owned, in full or in part, by the People’s Republic of China, Russia, North Korea, or Iran”

### House-Passed FY2022 Appropriations (H.R. 4502, §777)

- Would have allowed USDA to prohibit U.S. agricultural land purchases by companies owned, in full or in part, by China, Russia, Iran, or North Korea
- Would have prohibited participation in USDA-administered programs by these foreign entities

### House-Passed America COMPETES Act of 2022 (H.R. 4521, Division P)

- Would have required USDA to certify current foreign landholders, amend civil penalties, and also submit a report to Congress

## Other Proposed Legislation (117<sup>th</sup> and 118<sup>th</sup> Congress)

### Bills that would:

1. Tighten Foreign Investment Disclosure Requirements to USDA
2. Restrict Access to USDA Farm Programs by Foreign Persons/Entities
3. Expand Federal Review of Foreign Investment Transactions to Include the Secretaries of USDA and HHS
4. Prohibit U.S. Agricultural Land Purchases by Certain Foreign Adversaries

Some introduced legislation may include a combination of these various proposals



# **(1) Bills to Tighten AFIDA Reporting Requirements**

## **117<sup>th</sup> Congress**

### **Farmland Security Act of 2022 (H.R. 9395/S. 4667)**

- Would have required additional annual reporting by USDA on foreign investments in U.S. agricultural land and establish a public database
  - Note: Aspects enacted in FY2023 Appropriations Act (P.L. 117-328, §773)

### **Agriculture Foreign Investment Transparency Act (H.R. 9483)**

- Would have required all AFIDA reports be publicly available on USDA's website
- Would have expanded the scope of AFIDA reporting to include land leases (including idle farmland) and companies that issue equity securities that are foreign-traded, and all interests acquired, transferred, or held by a foreign person

### **Securing America's Land from Foreign Interference Act (S. 4703)**

- Would have raised the minimum penalty for nondisclosure to 10% of the land value

### **Security and Oversight for International Landholdings (SOIL Act) of 2022 (S. 4821)**

- Would have expanded AFIDA's scope to include certain land leasing agreements
- Would have revoked the minimum acreage requirement
- Would have expanded USDA reporting of investments involving China and Russia

## **(2) Bills to Restrict Access to Federal Assistance**

### **117<sup>th</sup> Congress**

#### **Security and Oversight for International Landholdings (SOIL Act) of 2022 (S. 4821)**

- Would have prohibited assistance, including subsidies, by any federal agency to a person for an agricultural real estate holding wholly or partly owned by a foreign national of a country designated as a “nonmarket economy country” or identified as a country that poses as risk to U.S. national security

#### **Farm Credit for Americans Act (S. 4954)**

- Would have prohibited Farm Credit lenders from lending to foreign nationals (subject to certain exceptions)

#### **Domestic Water Protection Act of 2022 (H.R. 9194)**

- Would have imposed excise taxes on certain sales of a water-intensive crop using Western groundwater



### (3) Bills to Expand Federal Oversight of Foreign Transactions

#### 118<sup>th</sup> Congress

##### **Promoting Agriculture Safeguards and Security (PASS) Act of 2023 (H.R. 683/S. 168)**

- Would add USDA as a CFIUS member
- Would require review of certain agricultural transactions and investments, including “biotechnology related to the agriculture sector”
- Would prohibit certain transactions involving agricultural companies and real estate
- Would establish new reporting requirements on agricultural transactions

##### **Foreign Adversary Risk Management (FARM) Act (H.R. 513/S. 68)**

- Would add USDA as a CFIUS member
- Would require review of certain agricultural investments by foreign entities
- Would add agricultural supply chains to the definitions of *critical infrastructure* and *critical technologies*
- Would establish new reporting requirements on agricultural transactions

### **(3) Bills to Expand Federal Oversight of Foreign Transactions (cont.)**

#### **117<sup>th</sup> Congress**

##### **Security and Oversight for International Landholdings (SOIL Act) of 2022 (S. 4821)**

- Would have added USDA as a CFIUS member
- Would have required CFIUS review of acquisitions/transfers of an interest (except security interests) in agricultural land by a person that is a national of a country designated as a “nonmarket economy” or as posing a national security risk

##### **Agricultural Security Risk Review Act (H.R. 3413/S. 1755)**

- Would have added USDA as a CFIUS member

##### **Food Security is National Security Act of 2021 (S. 3089)**

- Would have added USDA and HHS as a CFIUS member

## (4) Bills to Prohibit Investments from Certain Countries

### 118<sup>th</sup> Congress

#### **Promoting Agriculture Safeguards and Security (PASS) Act of 2023 (H.R. 683/S. 168)**

- Would prohibit transactions by China, Russia, Iran, or North Korea (*prohibited country*)
- Would prohibit transactions by certain foreign persons (based on association with a *prohibited country*)
- Would prohibit certain transactions involving agricultural companies and real estate

### Other 117<sup>th</sup> Congress Bills

#### **FY2023 and FY2022 Agriculture Appropriations (H.R. 8294, H.R. 4502)**

- Would have prohibited transactions by China, Russia, Iran, or North Korea

#### **Prohibition of Agricultural Land for the People's Republic of China Act (H.R. 7892)**

- Would have prohibited U.S. agricultural land purchases by China

## **(4) Bills Prohibiting Investments in U.S. Public and Private Lands**

### **118<sup>th</sup> Congress**

#### **Protecting Our Land Act (H.R. 212)**

- Would prohibit the purchase of U.S. public or private real estate by foreign adversaries and state sponsors of terrorism

#### **Securing America's Land from Foreign Interference Act (H.R. 334)**

- Would prohibit the purchase of U.S. public or private real estate by China

### **Other 117<sup>th</sup> Congress Bills**

- **Protecting Military Installations from Foreign Espionage Act (H.R. 2728)**
- **Protecting Military Installations and Ranges Act of 2021 (S. 1278)**
- **Securing America's Land from Foreign Interference Act (H.R. 3847/S. 4703)**
- **National Security Moratorium on Foreign Purchases of U.S. Land (H.R. 6383)**





## Other Ongoing Actions

# Recent Congressional Actions

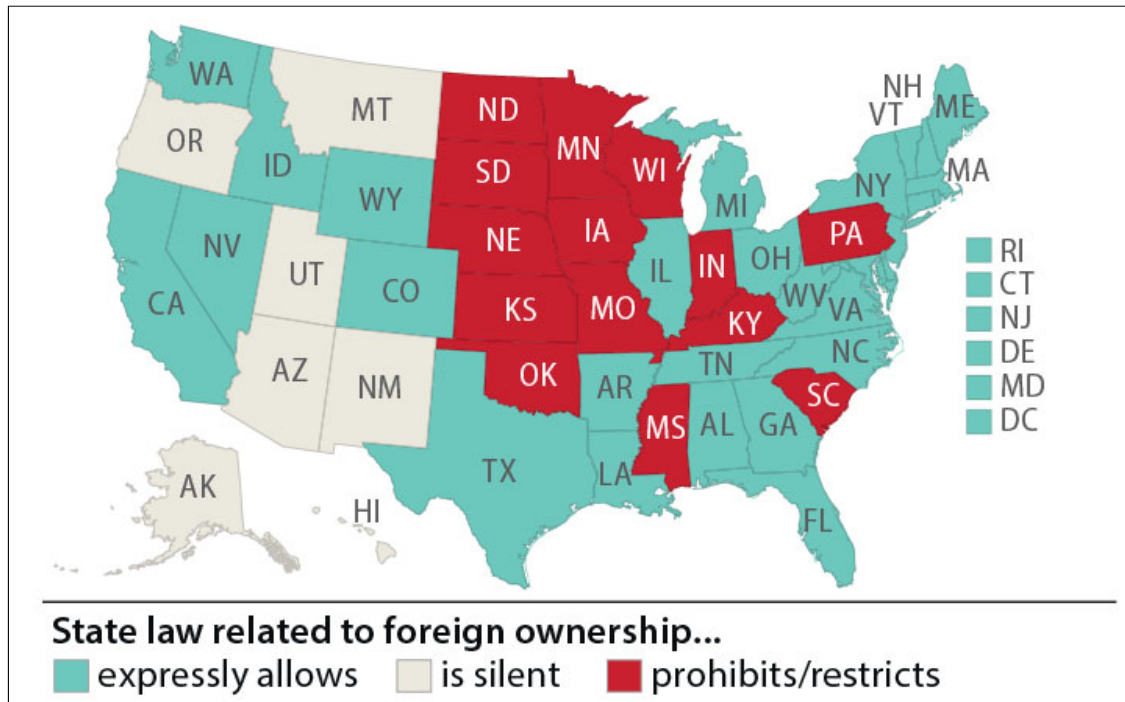
## House Agriculture Committee

- In October 2022, Members of the House Agriculture Committee tasked the Government Accountability Office (GAO) with conducting a review of AFIDA, of foreign investment in U.S. agricultural land and its impacts, and of U.S. government efforts to monitor these farmland acquisitions
- Press reports indicate the committee intends to conduct a hearing on foreign ownership of U.S. agricultural land but may consider any legislative changes to USDA's authorities as separate stand-alone action outside the farm bill

## House of Representatives

- The 2023 House Resolution (H.Res. 11) established the *House Select Committee on Strategic Competition between the United States and the Chinese Communist Party*
  - Concerns about China's "escalating aggression" and possible economic coercion
  - Concerns about fueling backlash against U.S. Asian Americans and Pacific Islanders
- Some Members intend to address U.S. farmland ownership concerns focused on U.S. competition with China

## Overview of Selected State Laws Related to Foreign Ownership of U.S. Agricultural Land



Source: CRS using data from National Agricultural Law Center, at <https://nationalaglawcenter.org/state-compilations/aglandownership/>, as depicted at <https://nalcprowpenginepowered.com/wp-content/uploads/assets/Webinars/Foreign-Land-Ownership.pdf>.

No U.S. state has instituted an absolute prohibition on foreign ownership

Some states limit or have proposed to prohibit certain foreign persons and entities from acquiring or owning an interest in agricultural land within their state

USDA has identified 339 counties in Iowa, Kansas, Pennsylvania, and Wisconsin as having the strictest prohibitions

## Selected CRS Products



- CRS InFocus IF12312, *Foreign Ownership of U.S. Farmland: Selected Policy Options*
- CRS InFocus IF11977, *Foreign Ownership and Holdings of U.S. Agricultural Land*
- CRS Report R46248, *U.S. Farm Programs: Eligibility and Payment Limits*
- CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*
- CRS Legal Sidebar LSB10848, *National Security Review Bodies: Legal Context and Comparison*

**CRS public website:** <https://crsreports.congress.gov/>



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