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Foreign Ownership of U.S. Agriculture: Selected Policy Options

Congress continues to debate the role of foreign investment in the U.S. food and agriculture sector. Recently enacted appropriations directed the U.S. Department of Agriculture (USDA) to expand public access to available data related to foreign holdings of U.S. *agricultural land*—including crop, grazing, and forest land (7 U.S.C. §3508). The 117th Congress considered, but did not enact, other legislation that would have further amended USDA and other federal authorities. The 118th Congress may reintroduce or expand these or other related proposals.

Enacted Agriculture Appropriations

Recently enacted appropriations included provisions and report language related to USDA reporting under the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA; P.L. 95-460, 7 U.S.C. §§3501-3508). AFIDA established a nationwide system for USDA to collect data pertaining to foreign ownership of U.S. agricultural land. USDA regulations require foreign investors who acquire, transfer, or hold an interest in U.S. agricultural land to disclose such holdings and transactions to USDA (7 C.F.R. Part 781). Foreign investors held a reported interest in 40 million acres of U.S. agricultural land as of year-end 2021. For more background, see CRS In Focus IF11977, *Foreign Farmland Ownership in the United States*.

The FY2023 Consolidated Appropriations Act (P.L. 117-328, §773) directs USDA to report on the impact of foreign investments in U.S. agricultural land on “family farms, rural communities, and the domestic food supply.” It directs USDA to establish a “streamlined process for electronic submission and retention of disclosures” under AFIDA and to provide an “internet database” with “disaggregated data from each disclosure submitted.” USDA has three years to implement some of these directives. The FY2022 appropriations (P.L. 117-103) directed USDA to report on “data on foreign-owned agricultural land trends including land owned, or partially owned, by the governments of China, Russia, Iran, or North Korea” and “the potential impacts on the American agricultural sector, food security, and rural economies.” Appropriators also expressed concerns about “agricultural land purchased by non-farming entities, including private equity firms and foreign-owned corporations” (H.Comm. Print 47-047).

Although not part of the enacted appropriations, the House-passed versions of the FY2023 and FY2022 appropriations bills included provisions that would have prohibited the purchase of U.S. agricultural land by companies owned, in full or in part, by China, Russia, North Korea, or Iran (H.R. 8294, §769; H.R. 4502, §777, respectively). The FY2022 House-passed bill also would have prohibited participation in USDA-administered programs. Similar provisions were

not taken up in the Senate. The House-passed prohibitions were not included in the enacted appropriations.

Other Legislative Proposals

The 117th Congress introduced various legislative proposals to address concerns involving foreign investment in U.S. agricultural lands. Although the FY2023 appropriations statute expands USDA data accessibility and transparency, the enacted provision did not amend AFIDA to authorize changes to existing federal disclosure requirements or to restrict USDA benefits related to foreign investments in U.S. farmland, as proposed by some. The 118th Congress might consider these types of proposals during the next farm bill debate. The 117th Congress considered, but did not enact, other proposals that would have provided additional oversight actions or prohibitions related to national security concerns. Some of these proposals may involve other federal authorities and fall outside the jurisdiction of the House and Senate Agriculture Committees.

Tightening AFIDA Disclosure Requirements

Users of USDA’s AFIDA data have noted inaccuracies and underreporting under current disclosure requirements. The Midwest Center for Investigative Reporting asserts that data collected under AFIDA are not complete, contain errors and omissions, do not track sales of foreign-held U.S. farmland, and may not accurately reflect changes over time. As reported by the center, USDA has acknowledged errors and omissions in the AFIDA data. Some Members raised similar concerns in an October 2022 request that the Government Accountability Office (GAO) review foreign investment in U.S. farmland and “its impact on national security, trade, and food security as well as U.S. government efforts to monitor these acquisitions.” Accordingly, GAO is examining which data USDA collects under AFIDA, how collection methods have changed over time, how USDA ensures accurate disclosure, and how reporting requirements under AFIDA might be improved.

One set of policy recommendations by the Lincoln Policy Group, a bipartisan consultancy, recommends that Congress “use its legislative, oversight, and appropriations powers to strengthen AFIDA and improve transparency” by requiring additional USDA data collection, oversight, restrictions, and penalties, as well as authorizing funding for USDA to manage and enforce AFIDA disclosure requirements and to improve data access. The group recommends that USDA improve AFIDA data accessibility by providing public access to disclosure forms, building a data dashboard, and providing data in a user-friendly format. The FY2023 enacted appropriations provision has instituted some of these types of data access and transparency recommendations. The group also suggests that USDA

conduct investigations of AFIDA data disclosures under its current authority (7 U.S.C. §3503).

In the 117th Congress, H.R. 9483 would have expanded AFIDA reporting to include security interests and land leases, as well as idle land acquisitions and companies that issue equity securities primarily traded on a foreign securities exchange, among other USDA reporting requirements intended to improve transparency. House-passed provisions in H.R. 4521 (Division P) would have amended USDA annual reporting requirements under AFIDA to establish a nationwide data reporting system, require USDA to certify current foreign agricultural landholders, amend civil penalties for failure to report or misreporting, and require reports from USDA. Other bills (H.R. 9395/S. 4667) proposed that USDA establish a public database and submit an annual report to Congress on the impacts of foreign investments in U.S. farmland. Some of these recommendations are consistent with provisions enacted in the FY2023 appropriations.

Restricting USDA Program Eligibility

Some proposals in the 117th Congress sought to prohibit certain foreign investors from participating in USDA-administered farm programs (H.R. 4502, H.R. 7892). Other bills would have prohibited access to other governmental services (S. 4954, H.R. 9194). Currently, foreign persons or entities may be eligible for USDA farm programs provided they meet certain requirements, including being “actively engaged” in farming (7 U.S.C. §1308–1). Eligibility, however, varies by USDA program, and some programs already exclude foreign persons and entities. For more background, see CRS Report R46248, *U.S. Farm Programs: Eligibility and Payment Limits*, and USDA fact sheet, “Payment Eligibility and Payment Limitations.”

Expanding Federal Oversight/Prohibitions

Some proposals in the 117th Congress reflected national security concerns related to foreign investment in the U.S. food and agriculture sector and would have amended federal authorities outside USDA. Some proposals would have expanded federal review of foreign investment transactions in the U.S. food and agriculture sectors, and other proposals would have prohibited certain foreign adversaries from such investment transactions. The October 2022 GAO request also asked whether there are assurances that foreign-owned U.S. agricultural land is being used for its “intended purpose and does not pose a threat to national security.” Federal law provides for various frameworks that allow for the review of national security risks posed by private commercial transactions (see CRS Legal Sidebar LSB10848, *National Security Review Bodies: Legal Context and Comparison*).

Some proposals in the 117th Congress would have amended Section 721 of the Defense Production Act of 1950 (50 U.S.C. §4565) governing the activities of the Committee on Foreign Investment in the United States (CFIUS). These bills would have added the Secretary of Agriculture and, in some cases, the Secretary of Health and Human Services (HHS) as members of CFIUS (H.R. 3413/S. 1755, H.R. 5490/S. 2931, and H.R. 8274/S. 4786, S. 3089). CFIUS is an interagency committee (chaired by the U.S. Treasury),

which serves the President in overseeing the potential national security risks of foreign investment that could result in control of U.S. businesses; certain noncontrolling investments, including those involving critical technologies or critical infrastructure; and certain real estate transactions that meet specific criteria. If an investment transaction falls within CFIUS’s jurisdiction and were found to threaten U.S. national security, the President has the authority to block or unwind the transaction (see CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*). In addition to expanding CFIUS’s membership, some 117th Congress proposals would have added agricultural systems and supply chains in the definitions of *critical infrastructure* and *critical technologies*, required review of any investment that could result in foreign control of any U.S. agricultural business, and required USDA and GAO to report on foreign influence in U.S. agriculture (H.R. 5490/S. 2931). S. 3089 also would have required CFIUS to consider the potential effects of a transaction on the security of the U.S. food and agriculture systems, and H.R. 8274/S. 4786 would have required review of transactions related to biotechnology and established new reporting requirements.

Although USDA and HHS are not current CFIUS members, CFIUS may consider foreign investment transactions in the food and agriculture sector, and the U.S. Treasury may designate USDA and HHS as co-leads in a CFIUS investigation on a case-by-case basis. In September 2022, President Biden instructed CFIUS to consider “elements of the agricultural industrial base that have implications for food security” among other factors to consider with respect to a transaction’s effect on U.S. technological leadership in areas affecting U.S. national security (E.O. 14083). The Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security (DHS) has designated USDA and HHS as the co-Sector Risk Management Agencies for the U.S. food and agriculture sector. DHS has designated the U.S. food and agriculture sector as one of 16 critical infrastructure sectors. See CRS Report R45809, *Critical Infrastructure: Emerging Trends and Policy Considerations for Congress*.

Other 117th Congress proposals would have prohibited the purchase of U.S. agricultural companies and real estate by persons or companies owned, in full or in part, by certain countries (H.R. 8274/S. 4786, H.R. 8294, H.R. 4502, H.R. 2728/S. 1278, H.R. 7892, H.R. 3847/S. 4703). Some of these proposals would have placed general restrictions on land ownership, including farmland. Other bills would have authorized the President to prohibit certain investment and real estate transactions (H.R. 6329/S. 1854, H.R. 8603, H.R. 6383, H.R. 8652). Some of these proposals, if enacted, could have caused unintended market and trade disruptions in the U.S. food and agriculture sector.

Current federal law imposes no restrictions on the amount of private U.S. agricultural land that can be foreign-owned. However, several states have imposed certain prohibitions or restrictions on foreign ownership, according to a review of state laws by the University of Arkansas National Agricultural Law Center. To date, no state has instituted an

absolute prohibition on foreign ownership, and most states expressly allow foreign ownership.

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