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Review Risk Is Increasing for Foreign Real Estate Developers

WRITTEN BY

Daniel N. Anziska | Peter E. Jeydel | Megan Conway Rahman | Charlene C. Goldfield

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The release of the “America First” investment policy memorandum on Feb. 21 was a glimpse into the Trump administration’s approach to foreign investment oversight, particularly for the Committee on Foreign Investment in the United States.[\[1\]](#)

The memorandum underscored the administration’s heightened focus on national security concerns in the real estate sector by highlighting that the “Administration [would] protect United States farmland and real estate near sensitive facilities” and “would strengthen CFIUS authority over ‘greenfield’ investments.”[\[2\]](#)

Greenfield investments — business ventures initiated without acquiring existing businesses — are often discussed together with CFIUS real estate issues, because they usually begin with acquiring property. Historically, greenfield investments have remained outside of CFIUS’ authority, due to a broad perception that they present lower national security risks and provide more economic benefits than acquisitions of existing businesses or assets.

Brownfield investments — the purchase or lease of existing property for a new business activity — present similar policy issues but can more commonly be subject to CFIUS’ review authority.

The May 2024 cryptocurrency mining case involving MineOne Investment I LP underscores the critical role that real estate transactions can play in the national security review process conducted by CFIUS.[\[3\]](#) The property acquired by MineOne was located one mile from Francis E. Warren Air Force Base; it started as a simple acquisition of property, but the property was later improved and stocked with foreign-sourced cryptocurrency mining equipment. This case was the first and currently only prohibition by a president of a real estate transaction via the CFIUS process that ultimately required divestment.

The current administration’s focus on real estate oversight, coupled with certain states’ efforts to expand their legislative reach over foreign investors’ real-property acquisitions, suggests there could be imminent changes on the horizon for real estate and foreign investment.

CFIUS’ Regulatory Scope

Since the 2018 enactment of the Foreign Investment Risk Review Modernization Act, or FIRRMA, CFIUS has

overseen covered real estate transactions involving foreign investors near certain listed military facilities, including farmland, even when the transaction does not involve an existing business.[\[4\]](#)

While real estate filings are voluntary — akin to a standard CFIUS filing — businesses are advised to assess carefully the specifics of the transaction in determining whether a declaration or notice should be filed.

Transactions that are not filed may be subject to a nonnotified review, which is typically disadvantageous for the parties relative to those that are filed voluntarily. At the end of the review process the parties may receive safe harbor protection.

The MineOne case exemplifies a real estate transaction that was subjected to intense scrutiny during a nonnotified review, and highlights the heightened risk involved in the nonnotified process.[\[5\]](#)

Significant changes to the real estate process did not end with FIRRMA. Effective Dec. 1, 2024, the U.S. Department of the Treasury added more military installations to the list of locations that could subject a transaction to a CFIUS real estate review.

The U.S. Department of Defense, a CFIUS-member agency, recommends to the Treasury military facilities that should be placed on CFIUS' covered real estate list. When these rules first took effect after FIRRMA was enacted, there were only eight listed military installations.

A new rule issued by the Treasury on Nov. 1, 2024, added 59 more installations, which in turn called for an amendment of the definition of “military installation” to include locations like Space Force bases, ammunition plants, military ranges and joint-forces training centers.[\[6\]](#) These updates aimed to enhance national security while providing clearer guidelines for foreign investors navigating the U.S. real estate market.[\[7\]](#)

The recent changes to the CFIUS regulations, expanding the list of covered military facilities subject to CFIUS jurisdiction:

- Added 40 additional military installations within a one-mile radius or in close proximity;
- Added 19 additional military installations within a 100-mile radius or in extended range; and
- Redesignated eight previously listed military installations to expand CFIUS jurisdiction from a one-mile to a 100-mile radius.

Effect of Growth in Foreign Acquisitions

A January 2024 report from the U.S. Government Accountability Office underscored a substantial rise in foreign acquisition of U.S. agricultural land.[\[8\]](#) This increase was largely attributed to foreign wind energy companies that secured on agricultural land.

While some members of Congress have been focused on this issue for several years, this report drew increased attention from Congress, and prompted the introduction of various bills that would mandate making the secretary

of agriculture a permanent member of CFIUS. However, the Consolidated Appropriations Act of 2024 ultimately only required that the participation of the secretary of agriculture in CFIUS' reviews on a case-by-case basis — specifically when the transaction includes agriculture issues.[\[9\]](#)

While the 118th Congress made efforts to enhance the CFIUS real estate review process in response to the GAO report, the current Congress has introduced several bills already aimed at expanding CFIUS' jurisdiction over real estate transactions by, for example, proposing to modify the definition of "close proximity" from one mile to 100 miles from a military installation for transactions involving foreign entities of concern like China.[\[10\]](#)

The memorandum's reference to agricultural land may also continue to drive congressional and executive branch interest in prioritizing CFIUS real estate reform. For example, the Foreign Adversary Risk Management Act, or FARM Act, which was reintroduced in January, again proposes to include the secretary of agriculture as a permanent CFIUS member, and categorizes the agricultural supply chain as critical infrastructure and critical technology within the CFIUS definitions.[\[11\]](#)

Other legislative proposals, like the Not One More Inch or Acre Act that was introduced in January, advocate for a complete ban on real estate transactions by citizens of China, members of the Chinese Communist Party, or any individual or entity, including subsidiaries, acting on behalf of the Chinese Communist Party or citizens of China. These bills include provisions similar to restrictions already enacted in several states.[\[12\]](#)

CFIUS-Lite State Laws

Several states have enacted legislation to regulate the acquisition of land by foreign purchasers, each imposing varying restrictions. Currently, Arkansas, Florida, Georgia and Indiana have passed such laws. Texas recently joined this list, having passed its bill on May 9. Additionally, many other states are considering similar measures, reflecting a growing trend.

Arkansas and Florida have encountered legal challenges to their real estate foreign investment laws. Florida's case, *Shen. v. Commissioner, Florida Department of Agriculture*, is still pending in part in the U.S. Court of Appeals for the Eleventh Circuit.[\[13\]](#)

Under the Florida law, foreign entities and individuals from countries of concern — such as China, Cuba, Russia, Iran, North Korea and Venezuela — who are not U.S. citizens or lawful permanent residents, are prohibited from acquiring or owning agricultural land or real property within 10 miles of military installations or critical infrastructure.

In Arkansas, restrictions previously applied to foreign parties that were defined under as being part "of a country subject to International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 126.1?[\[14\]](#)" — regulations restricting the exports and imports of certain defense articles and services from listed countries, including China.[\[15\]](#)

Both laws face challenges on preemption grounds and based on claimed violations of equal protection and due process rights. A court granted a preliminary injunction in Arkansas, leading to an amendment by the Arkansas House that narrows the restrictions to real estate within 10 miles of critical infrastructure, including military installations and communication or information technology facilities.[\[16\]](#)

Other states may seek to address foreign land acquisition concerns by establishing their own CFIUS-like review processes, as the Texas bill would do.^[17] If more states adopt similar processes, and such laws are ultimately able to survive constitutional challenges, it could introduce additional regulatory hurdles for investors to navigate.

Moving Forward

In February, at the American Conference Institute's CFIUS conference, Deputy Treasury Secretary Michael Faulkender previewed a fast-track process for investors from less sensitive countries.

He alluded to reducing uncertainty and unnecessary regulation for such low-sensitivity investors by collecting information from foreign investors earlier in the process and building a knowledge base that would limit the amount of additional information needed in each case, especially from repeat filers.^[18]

Shortly thereafter, on May 8, the Treasury announced a pilot known-investor portal to test this expedited process.

During the ACI discussion of real estate transactions, the recurrent theme seemed to be encouraging filers and investors to coordinate and communicate with the military community related to any pending real estate transaction that could implicate these concerns. Additionally, conference speakers emphasized that CFIUS' real estate reviews are consensus-driven, based on many factors that balance national security with economic benefit.

Individuals and businesses engaging in real estate transactions involving foreign investors should be aware that this area is as closely observed by CFIUS as other investments. Investors are advised to carefully assess their risks and consider filing with CFIUS. The MineOne case serves as a cautionary tale, highlighting the importance of risk assessment in avoiding costly damage.

Those entities that are entertaining greenfield or brownfield investments should continue to monitor any changes or reforms from CFIUS.

^[1] America First Investment Policy, The White House, <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

^[2] Id.

^[3] Statement on the President's Decision Prohibiting the Acquisition by MineOne Cloud Computing Investment I L.P. of Real Estate, and the Operation of a Cryptocurrency Mining Facility, in Close Proximity to Francis E. Warren Air Force Base, U.S. Department of the Treasury, <https://home.treasury.gov/news/press-releases/jy2335>.

^[4] 31 C.F.R. §§ 802.211-212.

^[5] Statement on the President's Decision Prohibiting the Acquisition by MineOne Cloud Computing Investment I

L.P. of Real Estate, and the Operation of a Cryptocurrency Mining Facility, in Close Proximity to Francis E. Warren Air Force Base, U.S. Department of the Treasury, <https://home.treasury.gov/news/press-releases/jy2335>.

[6] Definition of Military Installation and List of Military Installations in the Regulations Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, 89 FR 88128, <https://www.federalregister.gov/documents/2024/11/07/2024-25773/definition-of-military-installation-and-the-list-of-military-installations-in-the-regulations> (Nov. 7, 2024).

[7] 31 CFR § 802.211(b); Treasury Issues Final Rule Expanding CFIUS Coverage of Real Estate Transactions Around More Than 60 Military Installations, U.S. Department of the Treasury, <https://home.treasury.gov/news/press-releases/jy2708>.

[8] Foreign Investments in U.S. Agricultural Land, Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks, Government Accountability Office, January 2024, <https://www.gao.gov/products/gao-24-106337>.

[9] Pub. Law 118-42, § 787, 138 Stat. 118 (2024).

[10] S.197, 119th Cong. (1st Sess. 2025).

[11] S.179, 119th Cong. (1st Sess. 2025).

[12] S.176, 119th Cong. (1st Sess. 2025).

[13] Jim Saunders, Federal court blocks Florida law restricting people from China from owning land, Tallahassee Democrat., <https://www.tallahassee.com/story/news/2024/02/02/florida-law-restricting-chinese-land-ownership-is-blocked-by-court/72452713007/>.

[14] 22 C.F.R. § 126.1(d)(1)-(2).

[15] Ark. Assembly Bill 383, 94th Sess. (Ark. 2023).

[16] Ark. Assembly Bill 1680, 95th Sess. (Ark. 2025).

[17] <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB02117I.pdf#navpanes=0>.

[18] Deputy Secretary Michael Faulkender's Remarks at ACI CFIUS Conference, U.S. Department of Treasury, Apr. 24, 2025, <https://home.treasury.gov/news/press-releases/sb0101>.

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