

May 2009

SOVEREIGN WEALTH FUNDS

Laws Limiting Foreign Investment Affect Certain U.S. Assets and Agencies Have Various Enforcement Processes





Highlights of [GAO-09-608](#), a report to the Committee on Banking, Housing, and Urban Affairs, U.S. Senate

Why GAO Did This Study

Foreign investors in U.S. companies or assets include individuals, companies, and government entities. One type of foreign investor that has been increasingly active in world markets is sovereign wealth funds (SWF), government-controlled funds that seek to invest in other countries. As the activities of these funds have grown they have been praised as providing valuable capital to world markets, but questions have been raised about their lack of transparency and the potential impact of their investments on recipient countries.

GAO's second report on SWFs reviews (1) U.S. laws that specifically affect foreign investment, including that by SWFs, in the United States and (2) processes agencies use to enforce them. GAO reviewed policy statements, treaties, and U.S. laws, and interviewed and obtained information from agencies responsible for enforcing these laws. GAO also interviewed legal experts and organizations that track state foreign investment issues.

What GAO Recommends

To enhance oversight of foreign investments, GAO recommends that FCC, Agriculture, and DOT review the information they currently monitor to detect changes in ownership of U.S. assets subject to restriction or disclosure and assess the value of supplementing it with information from other government and private data sources on investment transactions.

View [GAO-09-608](#) or [key components](#). For more information, contact Loren Yager at (202) 512-4128 or yagerl@gao.gov or Richard Hillman at (202) 512-8678 or hillmanr@gao.gov.

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What GAO Found

While the United States has a general policy of openness to foreign investment, it does restrict foreign investment, including from SWFs, in certain U.S. assets. The U.S. government has issued policy statements supporting openness to foreign investment and entered into international agreements to protect investors. However, sectors with specific restrictions on foreign investments include transportation, communications, and energy. For example, foreign governments may not be issued radio communications licenses and foreign entities are not allowed to own or control more than 25 percent of the voting interest of any U.S. airline. In other cases, foreign investors can purchase companies or assets in a sector but face restrictions on their activities once they invest. For example, foreign companies can invest in U.S. banks, but if a company's stake exceeds 25 percent or the company would control the bank, the company must receive prior approval and become regulated by banking regulators and would be limited in the types of nonbanking activities in which it can also invest. Foreign investors can generally invest in U.S. agricultural land, but must disclose purchases above certain thresholds to the Department of Agriculture (Agriculture). In addition, while not specifically a restriction on foreign investment, a recently strengthened U.S. law authorizes interagency reviews of certain foreign investments, potentially in any sector, for national security considerations. Most federal laws limiting foreign investment were put in place decades ago in response to national security or economic concerns at the time. GAO's analysis of state-level restrictions on foreign investment indicated that some states had restrictions on foreign entities' ability to invest in real estate, including agricultural land, and some had restrictions on foreign government ownership of insurance companies.

The agencies responsible for enforcing the U.S. laws affecting foreign investment—Agriculture, Department of Transportation (DOT), Federal Reserve Board, Federal Communications Commission (FCC), Nuclear Regulatory Commission, and Department of the Interior—have processes for addressing key elements of enforcement, including those for (1) identifying all transactions subject to the law, (2) verifying the identity and amount of foreign ownership, and (3) monitoring changes in ownership. To identify investments potentially subject to restrictions and disclosure laws, each agency largely relies on requirements that entities seeking to establish new operations or invest in existing ones must first seek approval or licensing, or disclose their activity. To verify foreign ownership and ensure limits are not exceeded, agencies obtain and verify information about investor identities through information provided by the investors. Finally, to ensure that subsequent changes of ownership are disclosed and do not exceed legal limits, agencies review information from required ownership change declarations. Some agencies reported additional processes to identify new investments and ownership changes such as monitoring press releases, and receiving tips from competitors. Some agencies, but not all, reported using data from other government or private sources to independently verify changes in ownership information self-reported by entities in their sector.

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Abbreviations

Agriculture	Department of Agriculture
BIT	bilateral investment treaty
CFIUS	Committee on Foreign Investment in the United States
Commerce	Department of Commerce
DOD	Department of Defense
DOT	Department of Transportation
FCC	Federal Communications Commission
FRB	Federal Reserve Board
GDP	gross domestic product
IEEPA	International Emergency Economic Powers Act
Interior	Department of the Interior
NISP	National Industrial Security Program
NRC	Nuclear Regulatory Commission
OECD	Organization for Economic Co-operation and Development
SEC	Securities and Exchange Commission
Section 127	Foreign Investment and National Security Act of 2007
State	Department of State
SWF	Sovereign wealth fund
Treasury	Department of Treasury
USTR	Office of U.S. Trade Representative
WTO	World Trade Organization

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United States Government Accountability Office
Washington, DC 20548

May 20, 2009

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate

Foreign individuals, companies, and governments have long invested in U.S. stocks, bonds, land, or other assets. Recently, one type of investor has become more prominent in world capital markets. Known as sovereign wealth funds (SWF), these government-owned investment funds may seek to invest in a wide range of financial instruments in other countries. Funded through surpluses generated by exports of natural resources such as oil or other noncommodity exports, some SWFs have large and growing sums of money to invest.

While some observers see SWFs as having positive effects on markets because they may be long-term stable investors, other perspectives of different interested parties are mixed. Since August 2007, SWFs have made key investments into U.S. and European banks seeking capital as the result of disruptions in the subprime mortgage loan market and other markets. However, as large government-controlled investment funds, SWFs have also been criticized for the lack of transparency about their holdings and their investment strategies. Some market observers have expressed concerns that SWFs could adversely affect asset prices by moving large amounts of funds into or out of countries or markets. Concerns have also been raised in congressional hearings and elsewhere that rather than making investments primarily to earn investment returns, as is generally the motivation of a private investor, some SWFs may instead invest their assets to achieve the noncommercial or political goals of their governments. However, some observers have noted that little evidence exists as to whether SWFs have engaged or intend to engage in noncommercial activities in another country's economy.

Your letter asked us to examine a broad range of issues about SWFs. As agreed with your offices, we have begun addressing the issues raised in your request in a series of reports. In September 2008 we reported on the availability of data on the size of SWFs and their holdings internationally that have been publicly reported by SWFs, their governments,

international organizations, or private sources and the availability of published or reported data from the U.S. government or others on SWF investments in the United States.¹ In this report, we examined the legal environment facing SWF investment in the United States, including reviewing (1) the U.S. laws that specifically affect foreign investment, including that by SWFs in the United States, and (2) the processes agencies use to enforce these laws.

To identify the U.S. legal environment that could affect SWF investments in the United States, we reviewed U.S. government policy statements and directives, as well as treaties and international agreements addressing investment issues that the U.S. government has entered into with other countries. We also reviewed legal treatises on laws that affect foreign investment, as well as the laws and regulations themselves, to identify the laws that place restrictions on foreign investment or otherwise could affect foreign investors' use of any purchased U.S. assets. We spoke with law firms that represent foreign investors seeking to invest in the United States. We also interviewed officials from government agencies that address international trade and investment issues—including Department of Agriculture (Agriculture), Department of Commerce (Commerce), Federal Communications Commission (FCC), Department of Defense (DOD), Federal Reserve Board (FRB), Department of the Interior (Interior), Nuclear Regulatory Commission (NRC), Department of State, Department of Transportation (DOT), Department of the Treasury (Treasury), Office of the U.S. Trade Representative (USTR), and Securities and Exchange Commission (SEC). We also met with an industry association that represents U.S. subsidiaries of companies headquartered abroad. We excluded from our review most laws that apply to both domestic and foreign investors such as antitrust laws. We also collected information about laws addressing foreign investment in banking, insurance, and real estate and real property from the Conference of State Banking Supervisors, the National Association of Insurance Commissioners, and the National Association of Realtors. To determine the processes the agencies have for enforcing the federal-level U.S. laws that affect foreign investors specifically, we focused on the laws that either restricted or required disclosure of such investments as the most relevant. These were in the agriculture, transportation, banking, communications, and natural resources and energy sectors. For the six

¹See GAO, *Sovereign Wealth Funds: Publicly Available Data on Sizes and Investments for Some Funds Are Limited*, [GAO-08-946](#) (Washington, D.C.: Sept. 9, 2008).

agencies² responsible for enforcing the laws in these sectors, we interviewed officials, reviewed regulations, and obtained information on examples of enforcement actions taken by them with respect to restrictions or other requirements on foreign investors. Given the number of agencies we identified with enforcement responsibility for these major provisions, we did not conduct a full assessment of the extent to which the agencies are following their processes for enforcing the laws. See appendix I for a more detailed discussion of our objectives, scope, and methodology.

We conducted this performance audit from September 2008 through May 2009 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

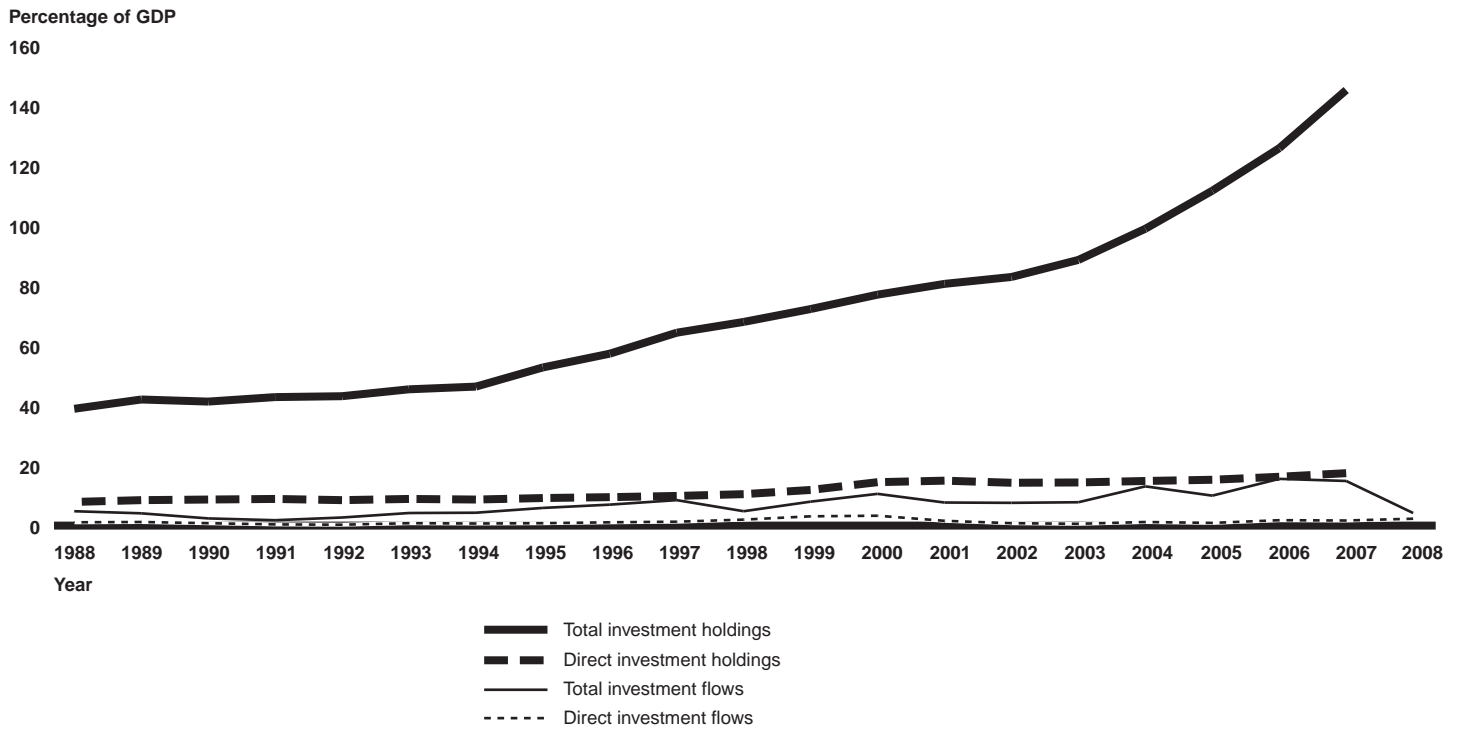
Background

During the past 20 years the level of foreign investment in the United States has increased. Foreign-owned assets in the United States, which include holdings of bonds and other securities, were approximately \$20 trillion in 2007, having increased from 39 percent of gross domestic product (GDP) in 1988 to 145 percent of GDP in 2007.³ Within this amount, the value of foreign investors' direct investment holdings—which are investments of 10 percent or more of the equity ownership in a company—have increased from about 8 percent of GDP in 1988 to more than 17 percent in 2007. In terms of annual flows into the United States, new investments by foreign entities have generally showed an upward trend since 1988, but dropped considerably in 2008 (see fig. 1).

²The six agencies are Agriculture, FRB, FCC, Interior, NRC, and DOT.

³As a percentage of overall combined market holdings of long term U.S. securities, foreign ownership increased from 10.2 percent in 2000 to 19.4 percent in 2008. This data comes from Treasury's International Capital System and FRB's Flow of Funds Accounts of the United States and excludes, for example, short term securities and bank loans.

Figure 1: Foreign Investment Holdings and Flows in the United States: 1988 to 2008^a



Source: International Economics Accounts, Bureau of Economic Analysis, U.S. Department of Commerce.

^aInvestment holdings represent the amount existing at a certain point in time. Investment flows are the amount of investment into and out of the United States each year. At the time of this report, 2007 is the latest year for which data on the value of total foreign investment in the United States were available.

SWFs Have Been Formed in Many Countries, but Recently Some Have Experienced Asset Value Declines

As we reported in September 2008, our analysis of the publicly available government sources and private researcher lists identified 48 SWFs across 34 countries from most regions of the world.⁴ Of the 48 SWFs we identified, 13 were in the Asia and Pacific region, 10 were located in the Middle East, and the remaining 25 were spread across Africa, North America, South America, the Caribbean, and Europe.⁵ Some countries, such as Singapore, the United Arab Emirates, and the Russian Federation, have more than one entity that can be considered a SWF. Some SWFs have existed for many years, but recently a number of new funds have been created. For example, while the Kuwait Investment Authority has existed since 1953 and the Kiribati Revenue Equalization Reserve Fund since 1956, many commodity and trade-exporting countries have set up new SWFs since 2000.⁶ In July 2008, for example, Saudi Arabia announced plans to create a new sovereign wealth fund.

Although some funds have continued to grow as they have received new capital inflows, the recent financial crisis has led to declines in the value of certain asset holdings of SWFs. Because not all funds publish information on their size and performance, no official estimate of the decline or increase in the overall size of SWFs is available. Some funds that do publish information on the value of their investment portfolios have reported losses in certain types of assets. Even with these losses, some funds are reporting that they have grown in size. For example, the

⁴There are a variety of definitions and lists of SWFs. Based on our research, we classified SWFs with the most interest to policymakers as those that (1) are government-chartered or sponsored investment vehicles; (2) invest some or all of their funds in assets other than sovereign debt outside the country that established them; (3) are funded through government transfers arising primarily from sovereign budget surpluses, trade surpluses, central bank currency reserves, or revenues from the commodity wealth of a country; and (4) are not actively functioning as a pension fund. We excluded funds that act as pension funds—that is, that received contributions from or made benefit payments to individuals—because these funds generally have specific liabilities in the form of near-term to long-term obligations that other funds do not have.

⁵Countries with SWFs that we included in our analysis were Algeria, Angola, Australia, Azerbaijan, Bahrain, Botswana, Brunei, Canada (Alberta and Quebec), Chile, China, Colombia, Gabon, Hong Kong, Ireland, Kazakhstan, Kiribati, Kuwait, Libya, Malaysia, Mauritania, New Zealand, Nigeria, Norway, Oman, Qatar, the Russian Federation, Sao Tome and Principe, Singapore, South Korea, Sudan, Trinidad and Tobago, the United Arab Emirates (Abu Dhabi and Dubai), and in the United States (Alaska, New Mexico, and Wyoming), Venezuela, and Vietnam.

⁶The Kuwait Investment Authority was founded to invest the proceeds of natural resource wealth and provide for future generations in Kuwait, and the Kiribati Revenue Equalization Reserve Fund was formed to manage revenues from the sale of Kiribati's phosphate supply.

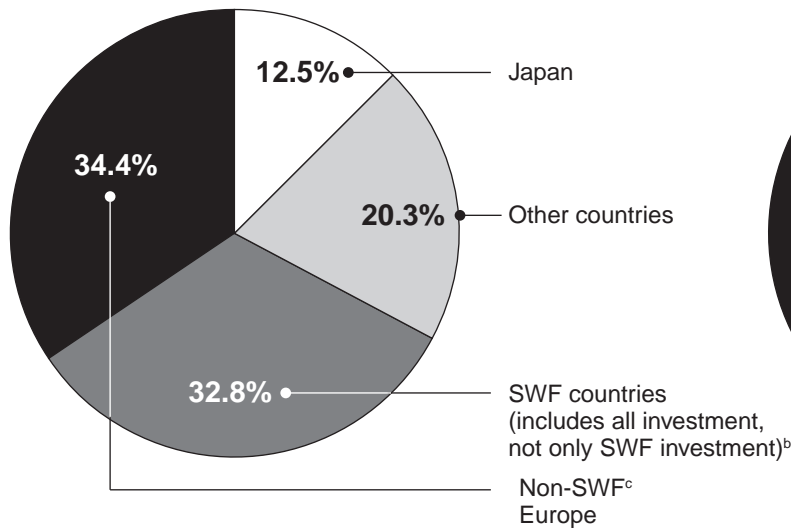
Norwegian Government Pension Fund-Global incurred losses of 23 percent of its value in 2008, including losses on its equity portfolio of about 41 percent. However, the government of Norway reports that the size of the fund increased in 2008 from new capital infusions. Another example is Mubadala Development Company, a SWF of the United Arab Emirates' Abu Dhabi, which experienced realized and unrealized losses of \$5.2 billion in 2008 but also received more than \$6.9 billion in contributions from shareholders.

Countries with SWFs account for a substantial share of the level of foreign investment in the United States, although only a portion of the investments in the United States made from entities in these countries are made by such funds. As we reported in 2008, the extent of SWF investment within the United States' data on overall foreign official holdings cannot be identified.⁷ In the United States in 2008, entities from countries with SWFs accounted for about 33 percent of foreign portfolio investment holdings—holdings of less than 10 percent of the equity ownership in a company—and more than 16 percent of foreign direct investment holdings (see fig. 2).

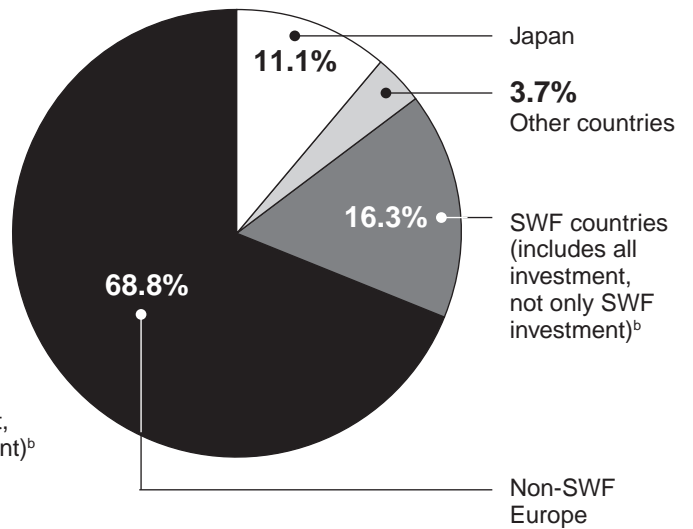
⁷We reported that while the Bureau of Economic Analysis of the Department of Commerce, and Treasury, are charged with collecting and reporting information on foreign investment in the United States, the extent to which SWFs have invested in U.S. assets is not readily identifiable from such data. We also reported that SWFs assets are a small portion of overall global assets and are less than the assets of several other large classes of investors. As of the end of 2006, the estimated total size of the SWFs we identified, \$2.7 trillion to \$3.2 trillion, constituted about 1.6 percent of the estimated \$190 trillion of financial assets outstanding globally.

Figure 2: Public and Private Foreign Portfolio and Direct Investment Holdings of U.S. Assets by Country Groupings

2008 foreign portfolio investment holdings



2007 foreign direct investment holdings^a



Sources: Treasury International Capital System, U.S. Department of Treasury, and International Economics Accounts, Bureau of Economic Analysis, U.S. Department of Commerce.

^aFor foreign direct investment holdings, no data are available for some SWF countries. Some countries do not report direct investment in the United States while other countries have their data suppressed to avoid disclosure of data on individual companies.

^bOnly a portion of a SWF country's investment in the United States is made through SWFs. We reported in 2008 that SWF holdings are not readily identifiable from U.S. data sources.

Data for SWF country holdings includes Iran and Iraq, which are not included in our definition of SWF countries, because their holdings cannot be separated out from those of other Middle East countries.

^cNon-SWF Europe is comprised of all European countries that do not have SWFs. The non-SWF Europe portfolio investment data includes Belgium, Luxembourg, and Switzerland even though these countries are major custodial, investment management, or security depository centers. Much of the investment attributed to these countries originates elsewhere. We also include Guernsey and Jersey. See Carol C. Bertaut, William L. Grier, and Ralph W. Tyron, *Understanding U.S. Cross-Border Securities Data*, Federal Reserve Bulletin (2006).

U.S. Federal Laws Do Not Address SWF Investments Specifically, but Restrict Foreign Investments in the United States in Some Sectors

While most types of investors operating in the United States are not subject to laws that are targeted at foreign investment, investments in some sectors are subject to restriction. Although the United States has an overall policy of openness to foreign investment through policy statements and treaties and international agreements addressing investment, we identified the banking, agriculture, transportation, natural resources and energy, communications, and defense sectors as having federal laws that apply to foreign investment specifically.⁸ Banking, agriculture, transportation, natural resources and energy, and communications make up about 20 percent of the U.S. economy in terms of gross output. The sector-specific laws include those that limit the amount of foreign ownership or control allowed or require approval of foreign ownership, laws that restrict activities of foreign-owned firms once the investment is made, and laws that require disclosure of foreign ownership and control. The predominant rationale for these investment laws is protecting national security. In addition to laws specific to certain sectors, some broader federal laws—including national security and general disclosure laws—can affect foreign investors investing in any sector. Lastly, there are state level laws that also target foreign investment, especially in the insurance and real estate sectors.

The United States Is Generally Open to Foreign Investment

The United States has long been open and receptive toward foreign investment and this openness has been demonstrated by the U.S. government in various statutory frameworks, and policy measures, and in treaties and international agreements addressing investment. For example, a 1977 presidential statement noted that the U.S. policy towards international investment was to neither promote nor discourage investment flows or activities. A 1983 presidential statement noted that direct investment in the United States was welcome if it was responding to market forces. More recently, in 2007 former President George W. Bush issued a policy statement supporting open international investment regimes and stating that the U.S. government unequivocally supports international investment in the United States.

The United States also has entered into agreements or treaties with other countries and international organizations that acknowledge its

⁸The defense sector is not a discrete sector in U.S. government economic statistics, as compiled by Commerce's Bureau of Economic Analysis. Rather it includes parts of various sectors across the economy, such as aviation, electronics, and communication.

commitment to openness to foreign investment and encourage other countries to also open their economies to investment. According to the Department of State, the United States has entered into bilateral investment treaties (BIT) with 40 countries, seeking to both encourage the adoption of market oriented policies and protect cross-border investments.⁹ The provisions of these treaties pledge the United States and the signing country to grant foreign investors the same investment opportunities as enjoyed by domestic investors.¹⁰ The BITs also provide for the right of an investor to submit an investment dispute with the treaty partner's government to international arbitration. In addition to these treaties, many of the free trade agreements the United States has entered into have provisions that pledge open investment among the signing countries. For example, the North American Free Trade Agreement signed by the United States, Canada, and Mexico has provisions with terms similar to those in the U.S. BITs. Lastly, the United States is also a member of two international organizations—the Organization for Economic and Community Development (OECD) and the World Trade Organisation (WTO)—that advocate open investment related policies, including policies that are transparent and nondiscriminatory.

In nine cases, the United States has entered into a BIT or a free trade agreement with countries with SWFs, as shown in table 1. The table shows the SWF countries that have signed investment treaties or entered into free trade agreements with the United States, or are members of OECD and WTO.

Table 1: U.S. and SWF-Country Investment Treaties and Membership in International Organizations

SWF countries	BIT with the United States	Free Trade Agreement with the United States	WTO member	OECD member
Algeria			observer ^a	
Angola			X	
Australia		X	X	X
Azerbaijan	X		observer	

⁹According to Treasury officials, the United States currently has BITs in force with 40 countries, and has signed BITs with 7 others that are not yet in force.

¹⁰U.S. BITs typically oblige each party to a treaty to treat investors from the other country as well as it treats domestic investors in like circumstances. This is called the obligation to provide national treatment. The treaties also oblige countries to treat investors from the other country as well as it treats other foreign investors in like circumstances. This is called the obligation to provide most favored nation treatment.

SWF countries	BIT with the United States	Free Trade Agreement with the United States	WTO member	OECD member
Bahrain	X	X	X	
Botswana			X	
Brunei			X	
Canada		X	X	X
Chile		X	X	accession candidate ^b
China			X	enhanced engagement ^c
Colombia		pending	X	
Gabon			X	
Hong Kong			X	
Ireland			X	X
Kazakhstan			observer	
Kiribati				
Kuwait			X	
Libya			observer	
Malaysia			X	
Mauritania			X	
New Zealand			X	X
Nigeria			X	
Norway			X	X
Oman		X	X	
Qatar			X	
Russia	X ^d		observer	accession candidate ^b
Sao Tome and Principe			observer	
Singapore		X	X	
South Korea		pending	X	X
Sudan			observer	
Trinidad and Tobago	X		X	
United Arab Emirates, Abu Dhabi			X	
United Arab Emirates, Dubai			X	
Venezuela			X	
Vietnam ^e			X	

Source: GAO analysis of State Department, WTO, and OECD documents.

^aObserver countries are defined as countries negotiating WTO membership.

^bAccession candidate refers to a country that is in the process of applying for full membership.

^cCountries that have entered into enhanced engagement with the OECD are not full members but do actively and directly participate as observers or full participants in the OECD committees and are expected to consider adhering progressively to OECD instruments.

^dThe BIT with Russia enters into force pending Russia's ratification process and exchange of ratified instruments.

^eVietnam has entered into a bilateral trade agreement with the United States that contains an investment chapter similar to a BIT.

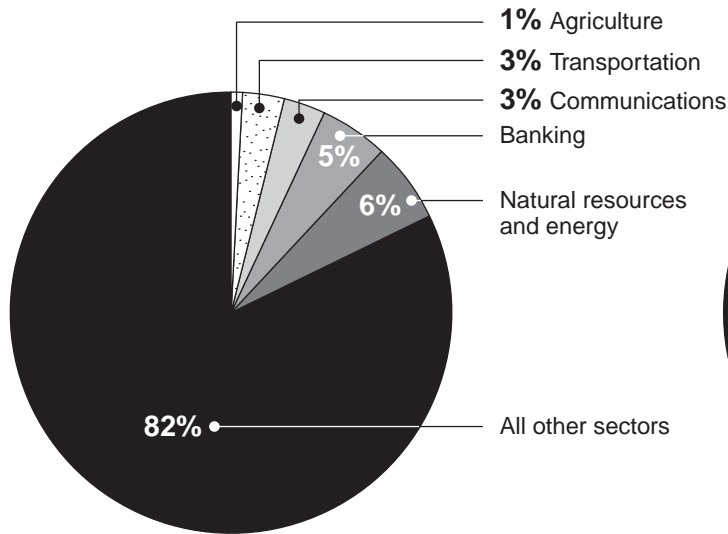
No Laws Specifically Target Sovereign Wealth Funds, but Some U.S. Sectors Have Laws That Specifically Apply to Foreign Investors

We did not find examples of federal laws that specifically target SWFs investing in the United States; however some laws specifically target foreign investment, which would include SWFs. While foreign investors appear to face no federal restrictions specifically targeting their ability to invest in many sectors of the U.S. economy, federal laws in several sectors—banking, communications, transportation, natural resources and energy, agriculture, and defense—do contain provisions that either restrict the level of foreign investment, limit the use of a foreign-owned asset, or at least require approval or disclosure of any foreign investments. Banking, communications, transportation, natural resources and energy, and agriculture accounted for about 20 percent of U.S. output in 2007.¹¹ However, in terms of attracting foreign investment, these sectors accounted for about 28 percent of foreign direct investment holdings in 2007 (see fig. 3).

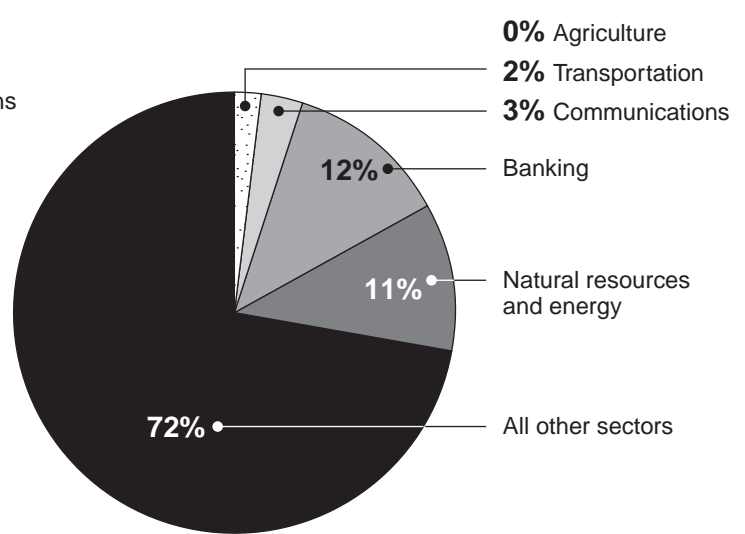
¹¹The sectors used for our analysis are defined as containing the following industries: (1) Banking: Federal Reserve banks, credit intermediation, and related activities; securities, commodity contracts, and investments; and funds, trusts and other financial vehicles; (2) Communications: broadcasting and telecommunications; (3) Transportation: air, rail, water, truck, pipeline, transit and ground passenger transportation; and other transportation and support activities; (4) Natural Resources and Energy: mining (including all sub industries), utilities, and petroleum and coal product manufacturing; (5) Agriculture: agriculture, forestry, fishing, and hunting; (6) All other sectors: all the remaining industries as reported in Commerce's Bureau of Economic Analysis's data on gross output and foreign direct investment. We did not separately include defense in this estimate and did not attempt to define the defense sector in terms of industries, as it includes parts of various sectors across the economy.

Figure 3: U.S. Gross Output and Foreign Direct Investment by Sector

Gross output 2007 (Total: \$25.8 trillion)



FDI position 2007 (Total: \$1.5 trillion)



Source: Industry Economic Accounts and International Economics Accounts, Bureau of Economic Analysis, U.S. Department of Commerce.

Note:

The sectors are defined as containing the following industries: (1) Banking: Federal Reserve banks, credit intermediation, and related activities; securities, commodity contracts, and investments; and funds trusts and other financial vehicles. (2) Communications: broadcasting and telecommunications. (3) Transportation: air, rail, water, truck, pipeline, transit and ground passenger transportation; and other transportation and support activities. (4) Natural resources and energy: mining (including all sub industries), utilities, and petroleum and coal product manufacturing. (5) Agriculture: agriculture, forestry, fishing, and hunting. (6) All other sectors: all the remaining industries as reported in Bureau of Economic Analysis's data on gross output and foreign direct investment.

Several U.S. laws specifically affect foreign investment in the United States regardless of the sector, with national security considerations having the largest potential impact. These laws can potentially limit foreign investment directly by preventing planned investments from being carried out, which according to Treasury officials is rare, or indirectly by discouraging investments by foreign investors who either find the process burdensome or believe their chances of success are too low. The Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (Section 721), authorizes the President, following a review by the interagency Committee on Foreign Investment in the United States (CFIUS), to suspend or prohibit a foreign acquisition, merger, or takeover of a U.S. business that is determined to threaten the

national security of the United States.¹² The President can do this in cases where there is credible evidence leading him to believe the foreign interest exercising control might take action that threatens to impair national security, and that provisions of law other than Section 721 and the International Emergency Economic Powers Act (IEEPA) do not provide adequate and appropriate authority for the President to protect the national security. CFIUS may also enter into an agreement with, or impose conditions on, parties to mitigate national security risks. Filing a notice of a transaction with CFIUS is voluntary. However, CFIUS can initiate a review unilaterally and can compel the production of necessary information about the terms of any covered transaction. If CFIUS is not satisfied that national security concerns can be mitigated, it can recommend that the President suspend or prohibit such a transaction, and the President may order divestment if the transaction has been completed, regardless of whether a notice was filed. The regulations outlining the review process for CFIUS provide broad authority to review any covered transaction if it is a possible impairment to national security.

In addition, IEEPA authorizes the President to prohibit certain transactions or block any property in which any foreign country or foreign national has any interest. It grants the President broad authorities to “deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.” Before exercising these authorities, IEEPA requires the President to declare a national emergency. National emergency declarations are governed by the National Emergencies Act. IEEPA sanctions are typically imposed pursuant to an executive order.

Further, in addition to the impact of statutes that may block foreign investment, there is also an element of political risk to investing in the United States that can have an effect on foreign investment. According to a trade group representing foreign investors, the political risk of investing in the United States has risen since 2006. For example, the CFIUS review process came under increased scrutiny, and went through significant reforms, after the public outcry over the attempted purchase by a Dubai company, Dubai Ports World, of a company that operated various U.S. port

¹²Section 721 of the Defense Production Act was amended by the Foreign Investment and National Security Act of 2007. Included in the changes was the inclusion of protection of critical infrastructure as a factor for CFIUS to take into account in its national security reviews.

facilities. Although initially allowed to proceed by CFIUS in 2006, subsequent congressional and media attention ultimately caused the company to sell the U.S. portion of the business to a U.S. company. Similar controversy thwarted a Chinese state-owned enterprise's attempt to purchase a U.S. oil company in 2005. Legal experts representing SWFs investing in the United States told us that they now take their clients to meet with members of Congress prior to initiating a transaction that might be viewed as politically sensitive to try to mitigate any potential concerns or resistance that could disrupt a planned transaction.

Some federal laws do not restrict foreign investment, but place general reporting requirements on foreign investments, regardless of the sector. For example, the International Investment and Trade in Services Act requires reporting on all investments in U.S. business enterprises in which a foreign person owns a 10 percent or greater voting interest, as well as periodic surveys of foreign ownership of U.S. firms. In addition, under the Tax Equity and Fiscal Responsibility Act of 1982, as amended, any U.S. corporation that is at least 25 percent foreign owned and any foreign corporation doing business in the United States must file an information return with the Internal Revenue Service disclosing reportable transactions.

Lastly, all foreign investors, including SWFs, must abide by all applicable U.S. laws. For example, any investor, including foreign investors, which make substantial investments in U.S. registered securities, must file proper disclosures with the SEC under federal securities laws. Also, mergers and acquisitions by foreign investors would still face a regulatory review by the Federal Trade Commission or the Department of Justice, if there are concerns about possible antitrust violations.

No Federal Laws Completely Prohibit Foreign Investment in a Sector, but Limits and Additional Requirements Placed on Foreign Investors Exist for Some Sectors

The sector-specific federal laws that apply to foreign investors vary in the types and levels of restrictions and provisions they contain. Based on our review, there is no sector of the U.S. economy within which foreign investors are completely excluded by federal law from any type of investing. The laws that are in place generally fall into one of the three following categories:

- (1) Laws that limit and regulate direct foreign ownership in certain sectors or require prior approval of foreign investment.
- (2) Laws that restrict activities of either the foreign-owned firm or the foreign parent once an investment has been made.

(3) Laws that do not explicitly limit foreign investment but require disclosure of ownership.

Table 2 summarizes the key provisions of these laws by sector. For a more detailed discussion of the applicable laws in each sector see appendix II.

Table 2: Major Provisions of Sector-Specific Laws that Apply Specifically to Foreign Investors^a

Laws that limit and regulate foreign investment or require approval	
Transportation: aviation and maritime	<ul style="list-style-type: none"> Foreign investment in U.S. air carriers is limited to 25% of voting interest. Foreign investors may have up to one third of the directors in U.S. air carriers. Foreign investment in U.S. flag coastwise trade vessels is limited to 25% ownership or control. Foreign investors may own 100% of a U.S. flagged international trade vessel so long as the vessel owner is organized and incorporated under the laws of the U.S., its chief executive office and chairman of the board are U.S. citizens, and no more than a minority of the number of its Board of Directors necessary to constitute a quorum are non-U.S. citizens. Foreign investment in U.S. commercial fishing vessels is limited to 25% ownership or control.
Communications	<ul style="list-style-type: none"> Foreign governments may not hold radio licenses. Foreign investment in corporations that hold broadcast, common carrier (telecommunications services), and certain other radio licenses is limited to 20%. Foreign investment in U.S. parent company of a company that holds above-mentioned licenses is generally limited to 25%. License to own or control a cable landing system, or authorization to provide telecommunications service may be withheld based on foreign ownership.
Banking	<ul style="list-style-type: none"> Foreign banks must get FRB approval before establishing a branch or agency, or acquiring ownership or control of a commercial lending company, and any company (foreign or domestic) must get FRB approval before acquiring 25% or more or otherwise acquiring control of a U.S. bank. Banks must generally be subject to comprehensive supervision on a consolidated basis by appropriate authorities in home country.
Natural Resources and Energy: nuclear energy	<ul style="list-style-type: none"> Entities that are known or are reasonably believed to be owned, controlled, or dominated by foreign interests may not hold a license for nuclear reactor facilities. Foreign ownership of nuclear production, utilization, and enrichment facilities, as well as licensing for source material and special nuclear material, must be evaluated for impact on the common defense and security of the United States.

Natural Resources and Energy: mining and mineral leases	<ul style="list-style-type: none"> No foreign investor may directly purchase or own federal mineral deposits that are open to exploration or other important mineral leases. Foreign investors may, however, own up to 100% of a U.S. company that holds mineral or mining leases. No foreign investor may directly hold a license to construct or operate a deepwater oil or natural gas port beyond State seaward boundaries and beyond the territorial limits of the United States.
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Laws that restrict activities of foreign-owned firms or investors after investment is made

Transportation: aviation and maritime	<ul style="list-style-type: none"> Vessels that are more than 25% foreign owned cannot carry cargo or passengers between U.S. ports. Aircraft that are more than 25% foreign owned cannot carry passengers or cargo between two U.S. cities. Vessels that are more than 25% foreign owned are only allowed to fish in U.S. fisheries under certain international agreements and are subject to annual quotas.
Banking	<ul style="list-style-type: none"> The activities a bank holding company can engage in are limited. (This is not limited to foreign investors.)
Defense	<ul style="list-style-type: none"> Non U.S. citizens and companies under foreign ownership, control, or influence are generally not eligible for access to classified information. Foreign government controlled companies generally cannot be awarded U.S. defense contracts, or Department of Energy contracts, which require access to proscribed information under a national security program, absent a waiver.

Laws that do not restrict, but only require disclosure, of foreign ownership

Agriculture	<ul style="list-style-type: none"> Foreign investors in agricultural land holdings must file a disclosure report.
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Source: GAO analysis of relevant statutes.

^aThis table represents a high level summary of provisions of complex statutes. For a more complete description of these provisions see appendix II.

Based on our analysis, we found three sectors—transportation, communications, and natural resources and energy—to have federal laws with provisions that specifically limit foreign ownership. The level of investment permitted or the type of restrictions vary by law and sector. For example, in the transportation sector, total foreign ownership may not exceed 25 percent of the voting interest of a U.S. air carrier, under provisions of the Federal Aviation Act of 1958. In the communications sector, foreign governments are prohibited from holding any radio license, and foreign corporations are prohibited from holding broadcast, common carrier (telecommunications services), and certain other radio licenses. These prohibitions may prevent an SWF from being issued such licenses, since such funds are government-owned investment vehicles. Foreign investors may, however, hold up to 20 percent of the capital stock of licensees, and may hold up to 25 percent of the capital stock of U.S.

entities that control licensees.¹³ And in the natural resources and energy sector, foreign investors are precluded from directly purchasing and holding mineral extraction leases on U.S. lands. However, according to officials at the Department of the Interior, the law does allow foreign investors to own these assets indirectly by allowing up to 100 percent foreign ownership of a U.S. company that holds such leases.

Some federal laws in transportation, banking, and defense do not prevent foreign investors from purchasing U.S. assets but instead restrict the activities in which these foreign-owned assets can engage. For example, under shipping laws foreign-owned vessels—meaning vessels more than 25 percent owned or controlled by foreign investors—are generally not permitted to carry cargo between points in the United States. Foreign investors are allowed to invest in U.S. companies that provide goods and services to the U.S. military, subject to restrictions related to the control of classified information and the performance on classified contracts. For example, under the regulations governing the National Industrial Security Program (NISP), a company is ineligible for access to classified information or award of a classified contract if that company is under foreign ownership, control or influence to such a degree that the granting of a facility clearance would be inconsistent with the national interest.¹⁴ Pursuant to the regulations under NISP, foreign ownership, control or influence may be mitigated through certain corporate agreements controlling shareholder interests with respect to shareholder voting, board of director composition, visitation privileges, technology and electronic communication controls, and other security measures to effectively monitor and address related threats.

In the banking sector, foreign companies, like domestic companies, must seek approval for investments that exceed certain thresholds and must meet other requirements once an investment is made above those thresholds. Foreign companies are required to receive approval from FRB prior to acquiring 25 percent or more of the voting shares, or otherwise acquiring control, of a U.S. bank. Foreign banks must receive prior approval of FRB before opening certain types of banking operations in the United States. In general, only foreign banks that are subject to

¹³The FCC also has discretion to permit licensees to exceed the 25 percent benchmark and, in particular cases, has approved higher levels of foreign investment in common carrier (telecommunications) licensees.

¹⁴Executive Order No. 12829, signed January 6, 1993, as amended, established NISP for the protection of information classified under Executive Order No. 12958, as amended.

comprehensive supervision on a consolidated basis by the appropriate authorities in their home country are permitted by FRB to acquire control of U.S. banks or bank holding companies or conduct banking operations in the United States. In addition, once a foreign company obtains 25 percent or more, or otherwise acquires control, of a U.S. bank or bank holding company, it becomes a bank holding company and is subject to restrictions on conducting certain banking and nonbanking related activities. These restrictions apply to the company and to any company that owns the foreign company. An official at FRB told us that this may also serve to limit foreign investment in banks by SWFs, since many of them would not want to be limited in the other types of investments they could make in the United States.

Finally, foreign investors face no federal restrictions on investments in U.S. agricultural land, but are required to report purchases above a minimum threshold. Under the Agricultural Foreign Investment Disclosure Act of 1978, foreign entities—meaning individuals, organizations, and governments—are required to file reports on the acquisition or transfer of agricultural land if it involves more than 10 acres or produces agricultural products of \$1,000 or more per year. U.S. entities in which there is a significant interest or substantial control must also file these reports. Significant interest or substantial control is defined as 10 percent or more direct or indirect interest in the entity if held by a single foreign person or a group of foreign persons acting in concert, or a 50 percent or more direct or indirect interest if held by a group of foreign persons not acting in concert, as long as none of them individually holds a 10 percent or greater interest. This information is compiled by the Farm Services Agency of the Department of Agriculture and is reported annually. A filing must also be made when there are certain changes in circumstance.¹⁵

Federal Laws Affecting Foreign Investment Were Generally Enacted to Protect National Security and U.S. Industry

The various investment laws restricting or otherwise affecting foreign investment in the United States date back to 1872 in one case and were generally enacted in response to national security concerns existing at the time. For example, the Merchant Marine Act of 1920 was passed largely to address concerns at the time that the United States maintain a sizable shipping fleet under U.S. control. Also, the restrictions on foreign

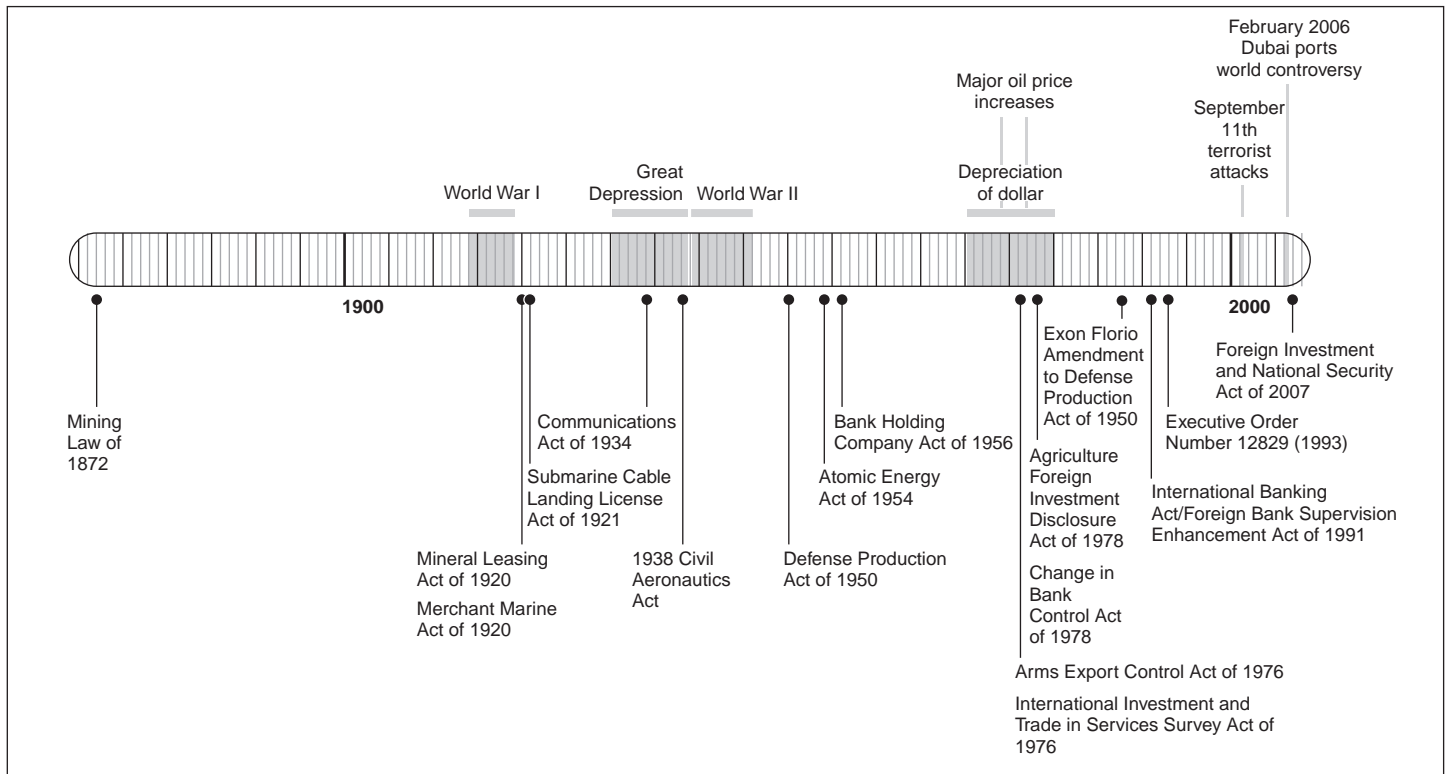
¹⁵Agriculture staff told us that they are regularly asked by such agencies as the Federal Bureau of Investigation, the Department of Homeland Security, Drug Enforcement Agency, and others to provide information about the identity of owners of agricultural lands. Such requests may be to ensure that drug traffickers are not using agricultural lands for illegal purposes.

ownership of communication licenses, as contained in provisions of the Communications Act of 1934, were intended to preclude foreign dominance of American radio and arose from lessons the United States had learned from the foreign dominance of cables and the dangers from espionage and propaganda disseminated through foreign-owned radio stations in the United States prior to and during World War I. Further, restrictions on ownership and control of U.S. air carriers are partially the result of concern over military reliance on civilian airlines to supplement airlift capacity in times of war. According to some experts, foreign investment laws have received more prominence or increased attention since the terrorist attacks on the United States in 2001.

Other rationales for these laws include, in part, using them to gain access for U.S. investors abroad and protecting U.S. industries. For example, part of the rationale for the reciprocity provision in the Mineral Leasing Act of 1920 was to promote outward U.S. investment by blocking investments from countries that did not allow U.S. investors to participate in mineral leasing.¹⁶ The Merchant Marine Act of 1920 also aimed to augment American shipping, as it allowed preferential rail rates for shippers that used U.S. vessels, and authorized the President to abrogate treaties that did not allow discrimination in favor of U.S. shipping. Further, the foreign ownership standards of the Civil Aeronautics Act of 1938 sought to protect the then fledgling U.S. airline industry and stimulate the domestic provision of aviation services. Lastly, the Agriculture Foreign Investment Disclosure Act of 1978 was enacted partly in response to concerns voiced by rural constituencies that foreign investment, spurred by the depreciation of the U.S. dollar against European currencies, was causing an escalation in the price of agricultural land in the United States and posing a threat to family farm and rural communities. Figure 5 shows a timeline of when these various laws were passed.

¹⁶The act was designed to give the State Department leverage to pressure foreign governments to open the door to U.S. businesses that wished to expand abroad.

Figure 4: Timeline of Major Foreign Investment Laws and Influencing Events



Source: GAO analysis.

State Laws Restricting Foreign Investment Largely Limit Investments in Real Estate and Insurance

In addition to federal laws that may affect foreign investment, we identified various state laws that may affect foreign investors' ability to invest in U.S. assets, based on information available from government and private sources with relevant expertise.¹⁷

Based on our analysis of information from these sources, most state level laws affecting foreign investment appear to be in the insurance and real estate sectors. According to information collected by the National Association of Insurance Commissioners, 28 states have laws that address foreign government ownership of insurance companies in their state. For example, under the state insurance code for Wyoming, no foreign insurer

¹⁷For more information on our methodology for identifying state level investment laws that may affect foreign investment please see appendix I.

that is owned or controlled in any manner or degree by any government or governmental agency shall be authorized to transact insurance in Wyoming.

Restrictions on foreign investment in real estate also exist in many states. According to a survey conducted by the National Association of Realtors in 2006, 37 U.S. states had some type of law affecting foreign ownership of real property. These laws varied, with some only requiring foreign investors to register as a company doing business in the state before purchasing property, and others specifically prohibiting foreign ownership of certain types of land. For example, one common type of real property restriction was for agricultural land, with 15 states having some law governing foreign ownership in this area.

Agencies Described Processes Addressing Key Elements of Enforcing Laws Affecting Foreign Investment; Using Supplemental Information Could Assist Some Agencies

Agencies responsible for enforcing laws specifically addressing foreign investment in six sectors have processes addressing the key elements of enforcement.¹⁸ We determined, based on analysis of the specific requirements of each law and professional judgment, that to enforce laws restricting or requiring disclosure of purchases, responsible agencies would at a minimum need to have processes addressing three key elements: detecting foreign investments, verifying the identity and share of foreign ownership to ensure that purchases meet requirements of certain statutes, and monitoring ongoing changes in ownership. Each of the agencies responsible for the six sectors has processes addressing these three enforcement elements, although we did not fully assess the extent to which these processes were being followed. However, reviewing additional transaction and investment sources could supplement some agencies' efforts to detect subsequent ownership changes. Staff with the six agencies reported that they find few violations of foreign investment laws in their sectors and have taken some enforcement actions pursuant to these laws, with none involving an SWF.

¹⁸For this report, we did not review compliance of the laws specifically applicable to defense industrial base firms since these laws apply equally to domestic investors that purchase such firms and have been discussed recently as part of other GAO reports. These laws include, for example, requirements that limit foreign ownership or influence for U.S. contractors that have access to classified information. See, for example, *Observations on the National Industrial Security Program*, [GAO-08-695T](#) (Washington, D.C.: Apr. 16, 2008.)

Enforcing Laws Affecting Foreign Investment Requires Several Key Elements

Federal agencies responsible for oversight in the agriculture, transportation, banking, communications, and the two natural resources and energy sectors of nuclear energy, and mining and mineral leases are also responsible for ensuring compliance with the laws relating to foreign investment in those sectors. In general, the laws in these sectors are intended to limit foreign investment in U.S. assets to specific percentages, ensure that the extent of foreign ownership of certain U.S. assets is known, or limit the activities that can be undertaken by the foreign owners. We determined that in order for agencies to have the necessary information to determine whether the requirements of the laws were being met, they would, at a minimum, need processes to

- (1) identify all transactions that are subject to the law,
- (2) verify the identity and amount of foreign ownership and control to ensure that the portion of foreign ownership and control is below the legal limit for restrictive statutes, and
- (3) monitor changes to ownership that occur after the initial transaction, and ensure that foreign ownership and control remains below the legal limit for blocking statutes.

Each Agency Identifies Transactions Subject to Relevant Laws Largely through Licensing and Disclosure Requirements

To identify investments potentially subject to the various restricting and disclosure laws, each of the six federal agencies becomes aware of potential foreign investments in its sectors through the existing licensing and filing requirements that apply to its sector. Though the processes vary by agency, the sector-specific laws applicable to foreign investment generally require approval, licensing, or disclosure of any entity seeking to operate or own assets in that sector (see table 3).

Table 3: Summary of Agency Processes for Detection of Initial Investments

Legal provision	Agency	Detection of initial investments
Transportation: aviation		
Foreign investment in U.S. air carriers is limited to 25% of voting interest.	Department of Transportation (DOT)	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • New air carriers must request a certificate to operate as a U.S. air carrier or an exemption from certification requirements from DOT. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • DOT monitors press reports and other public sources of information. • DOT receives reports of possible violations and abuses from the public and competitors.
Communications		
<p>Foreign governments may not hold radio licenses.</p> <p>Foreign investment in corporations that hold broadcast, common carrier (telecommunications services), and certain other radio licenses is limited to 20%.</p> <p>Foreign investment in U.S. parent company of a company that holds above-mentioned licenses is limited to 25%.</p> <p>License to own or control a cable landing system or authorization to provide telecommunications service may be withheld based on foreign ownership.</p>	Federal Communications Commission (FCC)	<p>Radio licenses</p> <p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Entities must apply for license with FCC prior to operations. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • FCC reviews public comments with respect to transactions it is required to approve <p>Telecommunications authorizations</p> <p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Companies wishing to provide telecommunications (i.e. common carrier) services from the United States to foreign countries or within the United States must apply for a certificate of public convenience from the FCC. • Companies wishing to construct and operate a submarine cable landing system in the United States must apply for a cable landing license.

Legal provision	Agency	Detection of initial investments
Banking		
<p>Foreign banks must get FRB approval before establishing a branch or agency, or acquiring ownership or control of a commercial lending company, and any company (foreign or domestic) must get FRB approval before acquiring 25% or more or otherwise acquiring control of a U.S. bank.</p> <p>Banks must generally be subject to comprehensive supervision on a consolidated basis by appropriate authorities in home country.</p>	Federal Reserve Board (FRB)	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Any investor, including foreign ones, acquiring a U.S. bank must apply for approval from the FRB. • Foreign banks must apply for approval to establish a branch or an agency, or acquire ownership or control of a commercial lending company. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • FRB monitors press releases and other public sources of information. • FRB relies on existing relationships within the banking community. • Banks are aware that banking is a highly regulated industry; therefore most banks looking to enter the U.S. market check with the FRB first.
Natural Resources and Energy: nuclear energy		
<p>Foreign investors or entities that are known or are reasonably believed to be owned, controlled, or dominated by foreign interests may not hold a license for nuclear facilities</p> <p>Foreign ownership of nuclear reactor facilities, as well as licensing for source materials or special nuclear material, must be evaluated for impact on the common defense and security of the United States.</p>	Nuclear Regulatory Commission (NRC)	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Entities must apply for the issuance of a license for nuclear production, utilization, and enrichment facilities and for handling source material or special nuclear material. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • NRC monitors press reports and other public sources of information • There are very few new applicants for nuclear reactors. Currently, there are 17 pending applications for new licenses and generally about 6 license transfer applications per year.
Natural Resources and Energy: mining and mineral leases		
<p>No foreign investor may directly purchase or own U.S. mineral deposits that are open to exploration or other important mineral leases.</p> <p>Foreign investors may however own up to 100% of a U.S. company that holds mineral leases.</p>	Department of the Interior (Interior)	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Interior is aware of investors because it awards mineral leases through competitive sales. • Claimants who have located mineral deposits that are open to mining exploration submit a notice or plan of operations before beginning operations.

Legal provision	Agency	Detection of initial investments
Agricultural lands		
Foreign investors in agricultural land holdings must file a disclosure report.	Department of Agriculture (Agriculture)	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> Foreign entities must file a report upon purchase of more than 10 acres in the aggregate of an agricultural land tract. Agriculture publicizes the requirements in various relevant newsletters and county government offices, and routinely notifies state bar associations, state real estate commissions, and state farm loan offices <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> Agriculture's county offices annually review all agricultural land ownership changes in the Recorder of Deeds Office in their county. Agriculture monitors news reports. Agriculture investigates whistleblower tips.

Source: GAO analysis of relevant laws and regulations, as well as activities described by agency officials, policy statements, and process documents from cited agencies.

Note: The legal provisions described above are high level summaries of complex statutes. For a more detailed discussion of the statutes see appendix II.

For five of the sectors we reviewed—transportation, banking, communications, nuclear energy, and mineral leases—entities seeking to establish new operations or invest in existing ones must generally seek approval from the federal oversight agencies through a licensing or approval process. As a result, when an entity seeks to make an investment in one of these sectors, the federal agency becomes aware of the transaction. With respect to purchases by foreign entities of U.S. agricultural land, the Department of Agriculture, although not required to approve such purchases, becomes aware of them through reporting requirements under the Agriculture Foreign Investment Disclosure Act.¹⁹

Agency officials described aspects of the approval and licensing requirements and other actions they take to ensure their awareness of foreign investments, as factors contributing to compliance. Officials at the six agencies stated that that foreign investors' compliance with these laws is likely high because the requirements are well-established, and consequences of not filing can be severe, such as halting operations or

¹⁹7 U.S.C. §§ 3501-3508. The Department of Agriculture publishes an annual report based on their review of the filings. The 2007 report shows that 1.6 percent of all privately held land in the United States (about .94 percent of all U.S. land) is held by foreigners.

forcing payment of penalties.²⁰ In addition, most of the agencies reported additional processes to ensure compliance. For example, staff from four agencies told us that they monitor press releases and other public information sources to identify potentially relevant transactions. For example, NRC officials reported that changes in ownership of nuclear facilities are somewhat rare and are newsworthy when they do occur. In addition, staffs from two agencies told us that they expect to receive whistleblower tips from competitors or inside sources which they use to help monitor compliance and become aware of transactions. For example, banking regulator officials told us that in the late 1990s a foreign bank that operated U.S. branches had invested in another U.S. financial services organization violating restrictions set out in the Bank Holding Company Act. They became aware of this violation from the staff of a law firm employed as part of the transaction. Staff from Agriculture told us that to ensure they are identifying all transactions, their field-based staff annually review county records to identify real estate transactions recorded that year to ensure all transfers of ownership involving foreign parties were reported to them as required.

Agencies' Processes for
Identifying Foreign Ownership
and Verifying Information Vary
by Statute

To identify foreign ownership, verify the accuracy of the identities of the reported owners, and determine the full extent of foreign ownership, each agency's methods vary according to the specific provisions in the law applicable to its sector (see table 4).

²⁰We did not independently verify the extent to which foreign investments violating these laws had occurred in these sectors.

Table 4: Summary of Agency Processes for Ensuring Foreign Owners Are Identified and Amounts Purchased Are Below Requirements

Legal provision	Agency	Process for ensuring foreign owners are identified and amounts purchased are below requirements
Transportation: aviation		
Foreign investment in U.S. air carriers is limited to 25% of voting interest.	Department of Transportation (DOT)	<p>DOT primarily uses the application process to ensure foreign owners are correctly identified and to verify that purchases are below legal limits. The agency:</p> <ul style="list-style-type: none"> • Requires U.S air carriers to submit extensive information about owners' citizenship (including all shareholders) before being authorized to operate. • Requires submission of copies of transaction documents (such as stockholders' agreement, stock purchase agreement, warrants, and debt or equity funding agreements) directly from all types of air carrier investors, including individuals, corporations, or partnerships. • Reviews SEC filings for publicly traded companies to supplement and corroborate other document submissions. • Traces ownership back to ultimate economic beneficiaries through review of air carrier's transaction records which state name and citizenship of shareholders, the number of shares held, and the percentage of ownership held.

Legal provision	Agency	Process for ensuring foreign owners are identified and amounts purchased are below requirements
Communications		
<p>Foreign governments may not hold radio licenses.</p> <p>Foreign investment in corporations that hold broadcast, common carrier (telecommunications services), and certain other radio licenses is limited to 20%.</p> <p>Foreign investment in a U.S. parent company of a company that holds above-mentioned licenses is limited to 25%.</p> <p>License to own or control a cable landing system or authorization to provide telecommunications service may be withheld based on foreign ownership.</p>	<p>Federal Communications Commission (FCC)</p>	<p>Radio licenses</p> <p>FCC primarily uses the application process to ensure foreign owners are correctly identified and to verify that purchases are below legal limits for investments in licensed companies. The agency:</p> <ul style="list-style-type: none"> • Requires that every attributable owner (generally, 10% or greater stake for telecommunications companies; 5% or greater voting stock interest in a corporation owning a broadcast license) must be reported in the application. • Requires that the applicant must provide information verifying citizenship of company's owners, and for some radio services, the location of the foreign owners' principal place of business, countries of incorporation, countries where the majority of assets are held, and countries that generate its most sales or revenues. Information is verified by FCC staff when necessary using publicly available resources. • Traces ownership back to ultimate economic beneficiaries by examining all voting and equity interests held in and through the successive corporate parents of an applicant. • May require a statistical sample of a publicly-traded companies' various stockholders to estimate the portion of foreign ownership. <p>Telecommunications and cable landing licenses</p> <p>When foreign ownership is involved, the application is forwarded to Team Telecom, an interagency review team, for approval.^a In addition, FCC asks for the identity of any 10% or greater equity or voting interest holders.</p> <p>There is no statutory foreign ownership limit for companies that provide non-radio based telecommunications services—foreign ownership is considered primarily in terms of national security interests by Team Telecom.</p>

Legal provision	Agency	Process for ensuring foreign owners are identified and amounts purchased are below requirements
Banking		
<p>Foreign banks must get FRB approval before establishing a branch or agency, or acquiring ownership or control of a commercial lending company, and any company (foreign or domestic) must get FRB approval before acquiring 25% or more or otherwise acquiring control of a U.S. bank.</p> <p>Banks must generally be subject to comprehensive supervision on a consolidated basis by appropriate authorities in home country.</p>	Federal Reserve Board (FRB)	<p>Foreign ownership is reviewed as part of the approval process. FRB:</p> <ul style="list-style-type: none"> • Examines ownership data records provided by applicants. • Conducts background checks on the relevant individuals and corporate entities looking for any crimes involving dishonesty. Individuals are also fingerprinted. • Performs Internet searches for background information on individuals and corporate entities. • Does full due diligence, including checking with Central Intelligence Agency, Drug Enforcement Agency, and U.S. Citizenship and Immigration Services. • Collects information on and reviews ownership up to ultimate beneficial owners. • Investigates and makes a determination of whether or not foreign bank is subject to comprehensive supervision on a consolidated basis by appropriate authorities in its home country. <p>There are also criminal penalties for misrepresentation of data provided to FRB on ownership.</p>

Legal provision	Agency	Process for ensuring foreign owners are identified and amounts purchased are below requirements
Natural Resources and Energy: nuclear energy		
<p>Foreign investors or entities that are known or are reasonably believed to be owned, controlled, or dominated by foreign interests may not hold a license for nuclear facilities.</p> <p>Foreign ownership of nuclear reactor facilities, as well as licensing for source materials or special nuclear material, must be evaluated for impact on the common defense and security of the United States.</p>	<p>Nuclear Regulatory Commission (NRC)</p>	<p>NRC primarily uses the application process to ensure foreign owners are correctly identified and to verify that purchases are below legal limits for foreign investments in licensed companies. The agency:</p> <ul style="list-style-type: none"> • Requires that all applicants submit information on citizenship of individuals, partners, principal officers, and directors; principal location of business; place of incorporation; and whether it is “owned, controlled, or dominated” by an alien, a foreign corporation, or a foreign government and, if so, the details of that relationship. • Informs applicants that attestations as to the validity of information are provided under penalty of perjury from misrepresentations. • Reviews information on ownership, including up to the level of ultimate beneficial owner, along with any additional information the NRC may have on the applicant. If there may be reason to believe that an applicant is “owned, controlled, or dominated” by a foreign interest, NRC will request additional information. • May request additional information, including copies of all relevant SEC filings, management positions held by non-U.S. citizens, and the ability of foreign entities to control the appointment of management personnel. • Considers percentage of foreign ownership in light of all other information in making a determination. There is no established threshold regarding foreign ownership. <p>The process for granting license for nuclear facilities is extensive; the average process takes 18 to 30 months. The NRC also evaluates foreign ownership with an orientation to common defense and security. Therefore even if an applicant is not found to be under foreign control it may still be denied a license if it has any foreign ownership and it is determined that the foreign ownership is a threat to the common defense and security of the United States.</p>

Legal provision	Agency	Process for ensuring foreign owners are identified and amounts purchased are below requirements
Natural Resources and Energy: mining and mineral leases		
<p>No foreign investor may directly purchase or own U.S. mineral deposits that are open to exploration or other important mineral leases.</p> <p>Foreign investors may however own up to 100% of a U.S. company that holds mineral leases.</p>	Department of the Interior (Interior)	<p>Interior verifies that lease holder meets requirements—proof of citizenship and proof of state in which corporation or partnership is incorporated or established—and investigates indirect foreign ownership to ensure that home country of foreign investor does not violate reciprocity requirements.^b</p> <p>There is no investigation into indirect foreign ownership unless a complaint is filed.</p> <p>There is no threshold requirement for indirect foreign ownership.</p>
Agricultural lands		
<p>Foreign investors in agricultural land holdings must file a disclosure report.</p>	Department of Agriculture (Agriculture)	<p>Agriculture:</p> <ul style="list-style-type: none"> • Attempts to track ownership back to the ultimate beneficial owner through documents received from investor; however the agency only has the authority under current regulations to track ownership back to three tiers.^c • Examines corporate structure documents provided by investor to identify foreign ownership. <p>Submission of a report with false or misleading information is punishable by fine of up to 25% of the asset's value.</p>

Source: GAO analysis of relevant laws and regulations, as well as activities described by agency officials, policy statements, and process documents from cited agencies.

Note: The legal provisions described above are high level summaries of complex statutes. For a more detailed discussion of the statutes see appendix II.

^aTeam Telecom also reviews transactions where foreign investors are seeking permission to exceed the 25% benchmark on indirect foreign ownership of common carrier (telecommunications services). Team Telecom is an interagency working group consisting of the Departments of Justice, Homeland Security, and Defense, as well as the Federal Bureau of Investigation. They review telecommunications transactions involving foreign ownership in order to assess the impact on the national security of the United States. They may require foreign investors to take certain actions to mitigate any potential threats prior to approval of the transaction.

^bAccording to Interior officials, there are no countries on the nonreciprocal list. Interior evaluates the laws of other countries with respect to equal treatment of foreign investors and makes a determination of reciprocity.

^cAgriculture officials said that they plan to revise the regulations to give them authority to track ownership back to the ultimate beneficial owner; however, no proposed regulations had been published in the Federal Register as of April 2009.

Across the six sectors, agencies require that investors establishing operations or making purchases submit information regarding ownership and control. The amount and type of information requested varies by agency, in part due to the requirements of the statute. For example, five of the agencies request information on ownership that allows the agency to track ownership back to the ultimate beneficial owners. However, in the

case of mineral leases, the statute requires only that the lease holder be a U.S. citizen, permanent resident, corporation, or association of citizens, residents, or corporations. The requirements concerning foreign ownership of the lease holder are less stringent than the other sectors, therefore Interior requires less documentation on ownership in this case.

Each agency reviews the information provided to determine if the extent of foreign ownership can be accurately determined, and in some cases verifies the accuracy against other sources. Three agencies reported using outside sources to verify some of the information provided. For example, DOT and NRC reported using, as part of their reviews of ownership information provided, disclosures that entities investing in 5 percent or more of the securities outstanding for a publicly traded company must file with SEC. Similarly, officials at FRB reported verifying information through background checks of individual owners. In the event that the original information provided is not enough to determine the extent of foreign ownership, some agencies will request additional information from the involved entities. For example, NRC can request additional information that shows information such as management positions held by non-U.S. citizens and the ability of foreign entities to control the appointment of management personnel. Officials at the agency stated they do not generally conduct independent verification of the information provided unless they have reason to believe the information provided is false. However, officials at NRC stated that any nuclear facility operator would be subject to ongoing ownership reviews under the National Industrial Security Program, in order to receive clearances for working with classified information. Each agency reported that it relies, to some extent, on companies truthfully providing ownership information and stated that there are penalties for misrepresentation that act as a deterrent to supplying false information.

Ensuring compliance with laws applicable to foreign ownership sometimes requires each agency to research various levels of ownership beyond the entity conducting the transaction in the United States. Some agency staff indicated this can be challenging because of the complex ownership structures often employed. To determine the identities of owners in such corporate structures, agency officials told us that they ask applicants to provide additional documentation. To determine the extent of foreign ownership of companies holding broadcast licenses that are publicly owned, FCC staff told us that they have the discretion to—and have—allowed the use of a statistical sample of the shareholders of a public entity. Where common carrier (telecommunications services) licenses are involved, FCC staff ask the applicants to categorize the type of

foreign investors who hold a stake in their company, such as foreign governments, pension plans and endowments, banks, insurance companies, and private equity funds. In contrast, Agriculture staff told us that their ability to determine the ultimate foreign owners of U.S. agricultural lands is sometimes limited under their current regulations because their staff do not have authority to compel disclosure of information beyond the third tier of ownership.²¹ However, an official at Agriculture told us that most filers comply with requests for additional information beyond three tiers and that, in cases where ownership is only traced to the third tier, this would still most likely indicate some level of foreign ownership.

Agencies Monitor Changes in Ownership and Ensure Ongoing Compliance with Laws through Various Processes

To ensure that subsequent changes of ownership are disclosed or do not exceed the legal limits after a transaction has been approved, the six agencies responsible for these sectors have various procedures. (See table 5.)

Table 5: Summary of Agency Processes for Identifying Ownership Changes after the Initial Transaction

Legal provision	Agency	Identifying ownership changes after the initial transaction
Aviation		
Foreign investment in U.S. air carriers is limited to 25% of voting interest.	Department of Transportation (DOT)	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • U.S. air carriers proposing a substantial change in ownership—10% or more—are required to submit information about the transaction to DOT, including the name of shareholders, the number of shares held, and the percentage of ownership held in light of the new transaction. • Department conducts periodic fitness reviews of U.S. air carriers every 3 to 5 years, which includes a comprehensive examination of the air carrier's ownership, including review of SEC filings for publicly held companies. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • DOT monitors press reports and other public sources of information • DOT receives reports of possible violations and abuses from the public and competitors.

²¹ Agriculture officials said that they plan to revise the regulations to give them authority to track ownership back to the ultimate beneficial owner; however, no proposed regulations had been published in the Federal Register as of April 2009.

Legal provision	Agency	Identifying ownership changes after the initial transaction
Communications		
<p>Foreign governments may not hold radio licenses.</p> <p>Foreign investment in corporations that hold broadcast, common carrier (telecommunications services), and certain other radio licenses is limited to 20%.</p> <p>Foreign investment in a U.S. parent company of a company that holds above-mentioned licenses is limited to 25%.</p> <p>License to own or control a cable landing system, or authorization to provide telecommunications service, may be withheld based on foreign ownership.</p>	<p>Federal Communications Commission (FCC)</p>	<p>Radio licenses</p> <p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Entities holding licenses must submit application and receive approval from FCC for all transfers of control or assignments of licenses. • In addition, all broadcast licensees must submit biennial ownership reports. • All licensees going through “pro-forma” restructuring (generally involving internal corporate restructuring or transfer of less than 50% of capital stock) must notify FCC of, or obtain FCC approval for, the reorganization, including changes in any disclosable interests (generally, 10% or greater for telecom companies; 5% for broadcast companies). <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • Every 8 years, FCC reviews ownership information during the broadcast license renewal processes. <p>FCC reviews comments by competitors on investment transactions it is required to approve.</p> <p>Telecommunications and cable landing licenses</p> <p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Any sale or transfer of control must receive prior FCC approval. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • FCC monitors comments made by competitors and other interested parties on investment transactions.
Banking		
<p>Foreign banks must get FRB approval before establishing a branch or agency, or acquiring ownership or control of a commercial lending company, and any company (foreign or domestic) must get FRB approval before acquiring 25% or more or otherwise acquiring control of a U.S. bank.</p> <p>Banks must generally be subject to comprehensive supervision on a consolidated basis by appropriate authorities in home country</p>	<p>Federal Reserve Board (FRB)</p>	<p><i>Primary actions</i></p> <p>Banks are required to notify the FRB of changes in ownership that constitute a change in bank control.</p> <ul style="list-style-type: none"> • FRB conducts annual bank examinations, including reviews of ownership structure. • Bank holding companies must submit annual reports listing all 5% or greater owners. <p><i>Supplemental actions</i></p> <p>FRB monitors press releases and other public sources of information such as SEC filings.</p> <p>FRB monitors banking-related actions in foreign countries and operations of foreign banks outside the U.S.</p> <p>FRB issues public orders for any opening or acquisition of a bank.</p>

Legal provision	Agency	Identifying ownership changes after the initial transaction
Natural Resources and Energy: nuclear energy		
<p>Foreign investors or entities that are known or are reasonably believed to be owned, controlled, or dominated by foreign interests may not hold a license for nuclear facilities.</p> <p>Foreign ownership of nuclear reactor facilities, as well as licensing for source materials or special nuclear material, must be evaluated for impact on the common defense and security of the United States.</p>	<p>Nuclear Regulatory Commission (NRC)</p>	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Current license holders must get prior written approval for transfers of facility licenses. • Licensees are also required to officially inform NRC of any significant changes in respect to ownership or control of a licensee or parent company. • NRC can take enforcement action, including revocation of a license, for conditions that would have warranted denial of a license application and imposition of civil penalties. <p><i>Supplemental actions</i></p> <ul style="list-style-type: none"> • Licensees must meet other requirements in terms of maintaining access to classified information, through which changes in ownership could be uncovered. • NRC officials told us there are a limited number of license holders—currently less than 100; therefore any changes are newsworthy and would be easily detected. <p>There is no ongoing review unless NRC becomes aware of a change in foreign ownership circumstances. Statute requires agency to act only if it knows or has reason to believe an applicant is owned, controlled, or dominated by foreign corporations or governments. Therefore there are no regular affirmative searches for all possible transactions.</p>
Natural Resources and Energy: mining and mineral leases		
<p>No foreign investor may directly purchase or own U.S. mineral deposits that are open to exploration or other important mineral leases.</p> <p>Foreign investors may however own up to 100% of a U.S. company that holds mineral leases.</p>	<p>Department of the Interior (Interior)</p>	<p><i>Primary actions</i></p> <ul style="list-style-type: none"> • Interior has to approve any transfer of ownership of mineral leases. • Lease holders must report 10% of owners or shareholders any time ownership changes.

Legal provision	Agency	Identifying ownership changes after the initial transaction
Agricultural lands		
Foreign investors in agricultural land holdings must file a disclosure report.	Department of Agriculture (Agriculture)	<p><i>Primary Actions:</i></p> <ul style="list-style-type: none"> • Filings must be made for changes in ownership. • The agency publicizes the requirements in various relevant newsletters and county government offices, and routinely notifies state bar associations, state real estate commissions, and state farm loan offices. <p><i>Supplemental Actions:</i></p> <ul style="list-style-type: none"> • The agency's county offices annually review all agricultural land ownership changes in the Recorder of Deeds Office in their county. • The agency's county offices send reminder letters to all foreign owners of land and keeps active files on foreign owners. • The agency receives whistleblower tips.

Source: GAO analysis of relevant laws and regulations, as well as activities described by agency officials, policy statements, and process documents from cited agencies.

Note: The legal provisions described above are high level summaries of complex statutes. For a more detailed discussion of the statutes see appendix II.

In each sector, entities conducting operations or holding licenses are required by regulations to notify the relevant agencies of ownership changes and are subject to civil or criminal penalties for noncompliance with these requirements. Some agencies supplement information from these mandated disclosures with additional reporting requirements or regular examinations which include reviews of ownership. In the broadcast sector, companies are required to submit a biennial ownership disclosure to FCC. In banking and transportation, agencies periodically review ownership. For example, banking regulators told us that most banks, including those with foreign owners, are examined annually, and these examinations include reviews of any changes in ownership to ensure that the entities are still in compliance with all requirements. DOT also examines operations in its sector when it conducts examinations of airlines operating in the United States every 3 to 5 years to ensure they still meet all fitness requirements.

Officials with DOT, NRC, FCC, and FRB stated that in addition to formal disclosure and review procedures, they also obtain information on changes in foreign ownership through tips from competitors or comments posted on public notices of proposed transactions. For example, a competitor in the U.S. airline industry filed a public petition in early 2009 asking DOT to examine the ownership of Virgin America because of

allegations that changes in the airline's ownership structure could have resulted in a violation of foreign ownership restrictions. Three agencies also reported reviewing news items about companies in their sectors to become aware of potential transactions that could lead to an ownership transfer. For example, FRB reported monitoring press reports on banks under their supervision through Bloomberg and other sources, and DOT also reported monitoring press reports on U.S. air carriers.

While each agency has various processes for monitoring ownership changes, staff at DOT, FCC, and Agriculture do not routinely review information from certain additional sources, including those maintained by other government agencies or private sources, to supplement the information they use to identify possible unreported ownership changes. Examples of sources of potentially relevant information include SEC investor filings and news reports and transaction information captured by private databases.²² This information may include reported full or partial acquisitions of U.S. assets by foreign investors in certain sectors. FRB reported that it does actively monitor SEC filings and press reports concerning the institutions they oversee. While staff at DOT and FCC told us that they believed that their current processes resulted in a high compliance rate amongst licensees in filing the proper notifications, staff at Agriculture indicated that they had not assessed whether sources such as SEC filings had potentially useful information because they were unaware that they could access such information from these sources. Although these agencies have processes for detecting changes in ownership, the emergence of new foreign investors—such as recently-created SWFs—appears to warrant consideration by these agencies of additional sources of investment information that could supplement their existing sources and provide them with greater assurance that they are detecting all relevant transactions.

NRC and Interior are two agencies that may not benefit from monitoring additional external sources for ownership changes. Citing the small number of licensees in the sector, NRC officials stated that the need for the agency to actively monitor changes in ownership in the nuclear sector is low. Moreover, because of nuclear facilities' use of classified information, operators are subject to reviews and monitoring using classified and unclassified data sources, including ongoing ownership

²²Examples of such private data sources are Bloomberg, Dealogic, Lexis-Nexis, and Thomson Reuters.

reviews, through the National Industrial Security Program. In addition, while officials at Interior did not report using any government or private sources to monitor changes in ownership, the law requires that leaseholders be U.S. citizens but does not limit foreign ownership of a leaseholder. Thus, there may be no need for the agency to actively monitor ownership changes.

Although Agencies Report that Violations Are Rare, They Have Taken Some Enforcement Actions Concerning Violations of Laws Related to Foreign Investment

Interior, FRB, FCC, NRC, and DOT have rarely identified violations of the applicable foreign investment laws, but have taken some enforcement actions, although none were identified as involving an SWF. The number of transactions the agencies review each year ranged from less than 20 to thousands. For example, NRC has reviewed, or is in the process of reviewing, 17 applications for new licenses for nuclear reactors since 2007, and reviews roughly 6 transfers of ownership each year. In contrast, Interior reported issuing more than 2,400 new onshore oil and gas leases and approving more than 23,000 transfers of ownership of such leases in 2008. Most of the agencies reported that their application and licensing processes help assure that the foreign investors comply with the law. As a result, actions against foreign investors for violating the laws restricting foreign holdings or requiring disclosure of purchases were rare. Only three of the six agencies reported taking any enforcement actions since 2004. FCC and DOT each reported one enforcement action over this period. Agriculture reported assessing a total of 160 penalties over this period for violations of their requirements, with the total for each year ranging from 15 to 48. In addition, agency officials told us that they were not aware of any current or past enforcement action that has been taken against an SWF. Officials with each of the agencies that oversee these laws also told us they have the ability to withdraw approvals to operate, rescind purchases, or levy fines, and that this provides considerable incentive on the part of any foreign investor to comply with existing laws. Further, the enforcement actions that agencies take, though rare, serve to strengthen their perceived enforcement power among industry participants. In 1999, FRB received information from a law firm involved in part of the transaction and subsequently took enforcement action against a private foreign bank that had allegedly hidden its acquisition of an insurance company. The bank's actions violated the restriction under the Bank Holding Company Act that it not engage in other financial activities. The agency assessed a \$100 million civil monetary penalty against the foreign bank and entered into a consent order with the former chief executive officer, based on allegations of his involvement in the violations, and the failure to disclose them to the regulator. The consent order further extends the restriction on the former chief executive officer's involvement

in the U.S. banking industry beyond the period that arose as a consequence of the officer's criminal plea agreement in a separate action.

Conclusions

The United States is generally open to foreign investment; however, sector-specific restrictions in federal laws on the ability of foreign investors to purchase stakes in U.S. businesses or other assets exist for certain sectors. We did not find any laws that only target SWFs. We found that the agencies that are responsible for overseeing the laws that either restrict or require disclosure of foreign investments have processes for addressing key elements of enforcement for these types of laws, including having processes for identifying transactions subject to the law, verifying foreign ownership amounts, and monitoring changes in ownership. To ensure that all changes in ownership that could affect compliance with these laws are identified, the laws and regulations generally require that such changes be reported to the relevant agency. Although each agency takes steps to review information about subsequent ownership changes, FCC, Agriculture, and DOT are not using some sources of information that might enhance their ability to detect changes in company ownership. These additional sources include information on investment transactions—including those involving foreign entities—that is compiled by various government or private sources. The sources with potentially relevant information for these agencies include Securities and Exchange Commission investor filings and transactions captured by private databases. By assessing the usefulness of these other sources and potentially including them in the agencies' oversight process, the agencies might more accurately determine if transactions subject to the foreign investment restrictions they are charged with enforcing have occurred.

Recommendation for Executive Action

To enhance their oversight of sectors subject to laws restricting or requiring disclosure of foreign investments, we recommend that the Chairman of the FCC and the Secretaries of Agriculture and Transportation review the current sources of the information their agencies currently monitor to detect changes in ownership of U.S. assets—which are subject to restriction or disclosure requirements applicable to foreign investors—and assess the value of supplementing these sources with information from other government and private data sources on investment transactions.

Agency Comments

We provided a draft of this report to Agriculture, DOD, DOT, FCC, FRB, Interior, NRC, SEC, State, Treasury, and the U.S. Trade Representative. In a memorandum from Agriculture, the Director of Economic and Policy Analysis noted that they agreed with our findings and recommendation that they review their current sources of information and assess the value of supplementing these with information from other government agencies and private data sources, and indicated that they will use such sources to enhance their ability to detect changes in ownership. DOT and FCC provided technical comments but did not specifically address our recommendation to them.

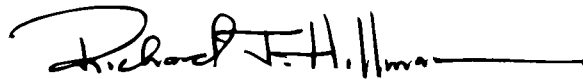
SEC provided technical comments, and noted that their staff are willing to assist other government agencies by explaining any securities-related reporting requirements that could apply to SWFs, and also by helping to locate information about investments in securities of U.S.-registered public companies. In providing technical comments, staff from the Federal Reserve Board also stated that while federal bank regulatory laws contains provisions that are specific to foreign banks, these provisions generally provide that foreign banks operating in the United States face the same standards and activity limits as U.S. banks. We also received technical comments from DOD, DOT, FCC, FRB, Interior, NRC, and Treasury, which we incorporated as appropriate.

We are sending copies of this report to the Secretaries of Agriculture, Defense, Interior, State, Transportation, and Treasury; the Chairmen of the FCC and SEC; NRC, FRB; U.S. Trade Representative; relevant congressional committees; and other interested parties. The report also is available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact Loren Yager at (202) 512-4128 or yagerl@gao.gov or Richard J. Hillman at (202) 512-8678 or hillmanr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.



Loren Yager
Director, International Affairs and Trade



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Appendix I: Objectives, Scope, and Methodology

Our objectives in this report were to (1) describe the U.S. laws that specifically affect foreign investment, including that by SWFs, in the United States, and (2) review the processes selected agencies use to enforce these laws.

To identify and describe the U.S. laws that specifically affect foreign investment, we (1) reviewed laws affecting foreign investment in the United States, (2) reviewed documents concerning those laws, and (3) talked to legal experts on foreign investment both inside and outside the federal government about laws they considered important for foreign investors in the United States.

The documents we reviewed included the following:

- A key legal study on foreign investment in the United States.¹
- A Department of the Treasury (Treasury) study from 1979 that summarized federal laws bearing on foreign investment in the United States.²
- Guides for foreign companies published by, for example, KPMG, on investing in the United States.³
- A legally-oriented testimony presented in congressional hearings on SWF in 2008.⁴

¹J. Eugene Marans, Joseph E. Pattison, John H. Shenefield, and John T. Byam, *Manual of Foreign Investment in the United States* (2004). We also spoke to one of the authors of this study about the study's scope. He told us the authors had refined the scope of this work over several decades but started out by examining a similarly-focused work done at the behest of the U.S. Commerce Department in the mid-1970s as part of a multi-volume series of reports on foreign investment in the United States. See David Morris Phillips *Legal Restraints on Foreign Direct Investment in the United States* (Washington, D.C., Apr. 1976).

²U.S. Department of the Treasury, *Foreign Investment in the United States: A Summary of Federal Laws Bearing on Foreign Investment in the United States* (Washington, D.C., 1979).

³KPMG, *Investing in the U.S.—A Guide for Foreign Companies* (February 2008). See also Baker & McKenzie, *A Legal Guide to Acquisitions and Doing Business in the United States*, (2007).

⁴Jeanne S. Arichibald. *U.S. Regulatory Framework for Assessing Sovereign Investments*. Testimony before the Senate Committee on Banking, Housing and Urban Affairs (Apr. 24, 2008).

- Two volumes on the history of foreign investment in the United States for reference to laws affecting foreign investment.⁵
- U.S. policy statements on foreign investment.
- State Department (State) documentation on treaties in force.⁶

We did not, however, include some types of laws that we judged less directly related to the entities investing in the United States, including the following:

- Income tax treaties and federal taxation of foreign investment in the United States.
- Immigration statutes detailing visa requirements for foreign investors or workers.
- Some federal regulations concerning foreign investment in commercial fisheries in the United States.
- Most laws that pertain equally to both domestic and foreign investors, as SWFs must follow the same laws that domestic investors must follow. Such laws include antitrust statutes and laws targeting health and safety.⁷

⁵Mira Wilkins, *The History of Foreign Investment in the United States to 1914*. Cambridge, Massachusetts: Harvard University Press, (1989). See also Mira Wilkins, *The History of Foreign Investment in the United States, 1914-1945*. Cambridge, Massachusetts: Harvard University Press, (1989). Appendix 4 of the second volume lists principal U.S. federal legislation affecting foreign investment in the United States.

⁶See U.S. Department of State, *Treaties in Force. Section 1: Bilateral Treaties*. (Washington, D.C., November 2007) and U.S. Department of State, *Treaties in Force. Section 2: Multilateral Agreements*. (Washington, D.C., November 2007).

⁷ We included several provisions of Federal Bank regulatory laws. Federal bank regulatory law deals specifically with foreign banks in a number of statutes, such as the International Banking Act and Bank Holding Company Act. In large part, the purpose of these provisions is to assure the foreign banks meet prudential standards that apply to U.S. banking organizations and that foreign banking organizations are generally subject to the same activity limits in the United States as those to which U.S. bank holding companies are subject.

- Legal issues related to the Committee on Foreign Investment in the United States, as these issues have been addressed in other GAO reports.⁸

We spoke with law firms that represent foreign investors seeking to invest in the United States. We also spoke with government agencies that address international trade and investment issues—including Department of Agriculture (Agriculture), Department of Commerce (Commerce), Federal Communications Commission (FCC), Department of Defense (DOD), Federal Reserve Board (FRB), Department of the Interior (Interior), Nuclear Regulatory Commission (NRC), State, Department of Transportation (DOT), Treasury, Office of the U.S. Trade Representative (USTR), and Securities and Exchange Commission (SEC). We also met with an industry association that represents U.S. subsidiaries of companies headquartered abroad.

The six sectors we identified through this process of reviewing laws were agriculture, banking, communications, natural resources and energy, defense industrial base, and transportation.⁹ Also, to provide information on their importance to the U.S. economy, we calculated the share of the U.S. economy five of the sectors represent by examining Bureau of Economic Analysis data on industries of the U.S. economy ranked by output and value added as a percent of gross domestic product (GDP).¹⁰ We determined that these data, as well as data on cross-border investments from Treasury and Commerce’s Bureau of Economic Analysis used to provide context in the background section of the report, are sufficiently reliable for our purposes.

⁸See GAO, *Defense Trade: Enhancements to the Implementation of Exon-Florio Could Strengthen the Law’s Effectiveness*, [GAO-05-686](#) (Washington, D.C.: Sept. 28, 2005). Also see, GAO, *Foreign Investment: Laws and Policies Regulating Foreign Investment in 10 Countries*, [GAO-08-320](#) (Washington, D.C.: Feb. 28, 2008).

⁹We also note that these sectors are included in the set of 17 critical infrastructure and key resource sectors identified by Homeland Security Presidential Directive 7, issued December 13, 2003. The 17 sectors identified in the directive are those that have been deemed critical to the nation’s security, economy, public health, and safety. The list of sectors specified in the directive is distinct from critical infrastructure as defined by CFIUS. The regulations governing the CFIUS process do not identify a list of sectors that, per se, constitute critical infrastructure.

¹⁰ We did not separately include defense in this estimate and did not attempt to define the defense sector in terms of industries, as it includes parts of various sectors across the economy.

To identify state level restrictions on foreign investment, we spoke with officials at various federal agencies—including Treasury, Commerce, and State—with responsibilities related to foreign investment, to attorneys that advise foreign investors with U.S. activities; and associations representing foreign businesses and state officials. These associations included those representing state legislatures and foreign companies operating in the United States. In addition, we obtained the results of surveys done by two organizations—the National Association of Insurance Commissioners and the National Association of Realtors—on state laws pertaining to foreign investors. We are reporting on information provided to us by these sources on state level laws. We did not conduct any independent review or analysis of state level investment laws.

To evaluate the processes that were used to enforce the federal level laws applicable to foreign investors, we reviewed agency processes for carrying out laws concerning foreign investment in the following sectors: agriculture, transportation: aviation, banking, broadcasting and telecommunications, mining, and nuclear energy. We selected these sectors for review as these were the sectors with laws that either restricted foreign investment or required its disclosures and represented critical infrastructure sectors. Agencies related to these sectors are Agriculture, DOT, FRB, FCC, Interior, and NRC respectively. To determine what activities these agencies undertake to enforce these laws, we interviewed officials at these agencies responsible for administering these laws. We also reviewed regulations and agency documents describing their processes for enforcing the laws. We determined, based on analysis of the specific requirements of each law and professional judgment, that for agencies to have the information necessary to determine whether the requirements of the laws were being met, they would, at a minimum, need processes to:

- (1) Identify all transactions that are subject to the law.
- (2) Verify the identity and amount of foreign ownership to ensure that the portion of foreign ownership is below the legal limit for blocking statutes.
- (3) Monitor changes to ownership that occur after the initial transaction, and ensure foreign ownership remains below the legal limit for blocking statutes.

We reviewed agency processes to determine whether they addressed these three elements. To determine whether agencies had any opportunities to improve their processes, we compared the various agencies' activities to

each other and used our professional judgment to assess whether any such opportunities existed. To determine the frequency and number of enforcement actions taken pursuant to these laws, we interviewed officials and requested documentation from relevant agencies.

We spoke with officials from Agriculture, Commerce, FCC, Defense, FRB, Interior, NRC, State, DOT, Treasury, USTR, and SEC. We also interviewed industry and trade associations, and attorneys who advise foreign investors in the United States.

We conducted this performance audit from October 2008 through May 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Summaries of Key Federal Foreign Investment Laws

This appendix covers key U.S. investment laws that specifically apply to foreign investors; it does not include all such laws.

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Agriculture			
Agricultural Foreign Investment Disclosure Act of 1978	Department of Agriculture	<p>Any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land must report to the Secretary of Agriculture if it involves more than 10 acres in the aggregate or if it produces agricultural products of \$1,000 or more per year. A foreign person holding land that becomes or ceases to be agricultural land, or a person who holds agricultural land who becomes or ceases to be a foreign person must report these changes.</p> <p>Foreign governments, entities created under the laws of a foreign country or that have their principal place of business in a foreign country, and U.S. entities in which there is a direct or indirect foreign “significant interest or substantial control” are included in the definition of foreign person.</p> <p>“Significant interest or substantial control” is defined as a 10% or more interest in an entity if held by a single foreign person or a group of foreign persons acting in concert, or a 50% or more interest if held by a group of foreign persons not acting in concert, none of whom individually holds a 10% or greater interest in that entity.</p>	<p>Failure to file a required report or knowingly submitting a report that does not contain all of the required information or contains misleading or false information may result in a civil penalty of up to 25% of the fair market value of the foreign person’s interest in the agricultural land.</p>

Appendix II: Summaries of Key Federal Foreign Investment Laws

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Transportation			
<p>Transportation Code, as amended</p> <p>International Agreement (Open Skies)</p>	<p>Department of Transportation (DOT)</p>	<p>To operate as a U.S. air carrier, an entity must obtain a certificate of public convenience and necessity or an exemption from the certification requirement from DOT.</p> <p>A certificate or an exemption may only be issued to a “citizen of the United States,” defined as: (1) an individual U.S. citizen; (2) a partnership whose members are all U.S. citizens; or (3) a corporation or association organized under U.S. law which is under the actual control of U.S. citizens and where at least 75% of the voting interest is owned and controlled by U.S. citizens and where the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens</p> <p>With respect to the third category, DOT has interpreted control to mean that day-to-day management decisions must be made by U.S. citizens, even if there is substantial foreign investment—within the statutory limits—in the airlines. DOT has construed the law as requiring actual control of the enterprise to rest with U.S. citizens. These are case-by-case determinations</p> <p>Under the Open Skies agreement between the United States and the European Union (EU), EU ownership of U.S. airlines of as much as 25% of the voting equity, and/or as much as 49.9% of the total equity of a U.S. airline shall not be deemed, of itself, to constitute control of that airline, and EU ownership of 50% or more of the total equity of a U.S. airline shall not be presumed to constitute control of that airline. Such ownership shall be considered on a case-by-case basis</p>	<p>DOT may deny, suspend, or revoke a certificate or other operating authority if an applicant or existing air carrier is found to be in violation of DOT’s foreign ownership requirements.</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Title 46 of the U.S. Code, including the Shipping Act of 1916, and the Merchant Marine Act of 1920, 1929, and 1936	Department of Transportation	<p>With respect to merchant shipping, a vessel may only be registered as a U.S. flag vessel if it has not been registered under the laws of a foreign country and it is wholly owned by one or more of the following: (1) the U.S. government; (2) a state government; (3) an individual U.S. citizen; (4) an association, trust, joint venture, or other entity where all members are U.S. citizens; (5) a partnership in which all the general partners are citizens of the U.S. and a controlling interest in the partnership is owned by U.S. citizens; or (6) a corporation if it is incorporated under U.S. law, its chief executive and chairman of the board are U.S. citizens, and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.</p> <p>The shipping of cargo between points in the United States (the coastwise trade) is generally limited to U.S.-flag vessels that are built in the United States and owned by U.S. citizens. A corporation, partnership, or association may qualify as a U.S. citizen only if 75% of the entity is owned by U.S. citizens, in addition to other requirements.</p>	<p>A person that violates this provision is liable to the U.S. government for a civil penalty of not more than \$11,000. Each day of a continuing violation is a separate violation. In some situations, a vessel and its equipment are liable to seizure by and forfeiture to the government</p> <p>Merchandise transported in violation of the registration requirements is liable to seizure by and forfeiture to the government. Alternatively, an amount equal to the value of the merchandise or the actual cost of the transportation, whichever is greater, may be recovered from any person transporting the merchandise or causing the merchandise to be transported.</p> <p>Note: there can be dual penalties here, under both of these provisions, if both apply.</p>
Magnuson-Stevens Fishery Conservation and Management Act, as amended	Department of Transportation	<p>Foreign vessels are not permitted to fish commercially within the boundaries of any state. However, they can fish within an area that is contiguous to the U.S.'s territorial sea and extends 200 miles from the shore, called the Exclusive Economic Zone (EEZ), but only after issuance of a permit by the Secretary of Commerce. Foreign vessels fishing in the EEZ are also subject to annual quotas.</p>	<p>In general, persons found to have committed specified acts prohibited by certain sections of the act shall be liable for a civil penalty not to exceed \$100,000 for each violation, considering various factors.</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Communications			
Communications Act of 1934, as amended	Federal Communications Commission (FCC)	<p>Under Section 310(a) of the Act, foreign governments or their representatives may not hold radio licenses.</p> <p>Under Section 310(b) of the Act, certain communications licenses—including broadcast, wireless personal communications systems, cellular, and aeronautical fixed—may not be granted to:</p> <ol style="list-style-type: none"> 1. any alien individual or his or her representative; 2. any foreign corporation; 3. any corporation of which more than 20% of the stock is owned or voted by aliens or, their representatives, or by a foreign government or its representative, or by foreign corporations; 4. any corporation directly or indirectly controlled by any other corporation of which more than 25% of the stock is owned or voted by aliens, their representatives, or by a foreign government or its representative, or by a foreign corporation. <p>With respect to the last category, a public interest determination may be made to permit additional foreign ownership above the 25% threshold.</p> <p>Under Section 214 of the Act, any party seeking to provide common carrier communication services between the U.S. and a foreign point must obtain a certificate of public convenience from the FCC. Under the “public convenience or necessity” standard, the FCC may have the authority to restrict ownership and facility operation to U.S. citizens and entities controlled by U.S. citizens.</p>	<p>FCC can deny an application for a license or the transfer of a license to any company that doesn’t meet these ownership requirements.</p> <p>FCC has authority to order the forfeiture of assets for violations under the Act. There are daily and overall maximums outlined in the act for different types of violations.</p> <p>For example, an unauthorized “substantial transfer of control” carries a suggested fine of \$8,000, which can be lowered or raised at the discretion of FCC subject to the daily and overall maximums.</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Submarine Cable Landing License Act of 1921	Federal Communications Commission (FCC)	<p>Any entity that owns or controls a cable landing station in the U.S., and all other entities owning or controlling a 5% or greater interest in the cable system and using the U.S. points of the cable system are required to apply for and receive a cable landing license.</p> <p>The Act permits the FCC to deny an application for a license if to do so would assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States; FCC can also place conditions on such licenses. As a result, FCC has discretion to withhold a cable landing license based on foreign ownership issues. Under certain circumstances, licensees are required to notify FCC for prior approval if they seek to become affiliated with a foreign carrier.</p>	<p>FCC can withhold or revoke a license or transfer of a license under certain conditions.</p> <p>A person who knowingly operates without a required license shall be guilty of a misdemeanor and fined not more than \$5,000, or imprisoned for not more than one year, or both.</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Natural Resources and Energy			
Atomic Energy Act of 1954	Nuclear Regulatory Commission (NRC)	<p>The NRC is prohibited from licensing any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material or special nuclear material if, in the opinion of NRC, the issuance of a license to such person for such purpose would be "inimical to the common defense and security or the health and safety of the public." Any transfer of such a license must be approved by the NRC.</p> <p>NRC is prohibited from issuing a license for utilization or production facilities for industrial or commercial purposes, medical therapy, or research and development activities to</p> <ul style="list-style-type: none"> • any person for activities which are not under or within the jurisdiction of the United States (with some exceptions); • an alien or any corporation or other entity if NRC knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or • any person within the United States if, in the opinion of the NRC, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public. <p>The NRC is prohibited from issuing a license to the U.S. Enrichment Corporation if the NRC determines the applicant is owned by a foreign interest.</p>	NRC can deny an application for a license or a license transfer from applicants if it makes the requisite findings.
General Mining Law of 1872	Department of the Interior (Interior)	Except as otherwise provided by law, all valuable mineral deposits in lands belonging to the United States that are open to exploration and purchase may be purchased by U.S. citizens and by those who have declared their intention to become U.S. citizens.	Interior can deny a mineral patent to any applicant who does not meet the requirements.

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Mineral Leasing Act of 1920, as amended	Department of the Interior (Interior)	<p>Authorizes the disposition (e.g. by prospecting permits or leases) by the federal government of deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite or gas, and the public lands containing such deposits only to: (1) U.S. citizens; (2) association of citizens; (3) municipalities, in the case of coal, oil, oil shale, or gas; and (4) any corporation organized under U.S. law.</p> <p>Foreign investors may own an interest in a lease through stock ownership, stock holding, or stock control in a present or potential lessee that is incorporated under U.S. law but only if the laws, customs, or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.</p>	If a lease holder is found to be noncompliant with requirements, they have 2 years to remedy the situation, after 2 years if nothing is done the foreign interest is deemed relinquished.
Deepwater Ports Act of 1974, as amended		<p>The Deepwater Ports Act of 1974, as amended authorizes the Secretary of Transportation to issue licenses to U.S. citizens for the construction and operation of deepwater oil or liquid natural gas ports beyond State seaward boundaries and beyond the territorial limits of the United States.</p> <p>Foreign investors may own interest in a license holder through stock ownership so long as the licensee is incorporated under U.S. law and its president or other executive officer, and its chairman of the board of directors is a United States citizen and the board is comprised of no more noncitizens than a minority of the number necessary to constitute a quorum to conduct business.</p>	Transportation can deny license to any applicant who does not meet the requirements.

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Defense			
Executive Order No. 12829, National Industrial Security Program, as amended	Department of Defense (DOD) Nuclear Regulatory Commission (NRC) Department of Energy (DOE) Office of the Director of National Intelligence (ODNI)	<p>The purpose of the National Industrial Security Program (NISP) is to safeguard federal government classified information that is released to contractors, licensees, and grantees of the U.S. government. The NISP Operation Manual provides uniform procedures and guidance for applying these safeguards, and applies to all government contractors that perform contracts which require their access to classified information. Foreign investors in businesses engaged in classified government contract work (e.g., national defense, intelligence activities, nuclear power production, or nuclear weapon production) are subject to these detailed procedures.</p> <p>Under these procedures, contractors cannot have access to classified information unless they have a facility clearance. To be eligible for such a clearance, a company must not be under foreign ownership, control, or influence (FOCI) unless measures can be taken to negate or mitigate the FOCI.</p>	Firms that cannot negate or mitigate an FOCI, cannot have access to classified information.

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
National Defense Authorization Act for Fiscal Year 1993	Department of Defense (DOD) Department of Energy (DOE)	<p>A U.S. company that is controlled by one or more foreign governments cannot be awarded a U.S. defense contract, or a DOE contract under a national security program, if such contract requires access to proscribed information unless the secretary concerned determines that a waiver is essential to the national security interests of the United States or in cases involving contracts for restoration, remediation, or waste management, where such a waiver will advance the environmental restoration, remediation, or waste management objectives of the department and will not harm the national security interests of the United States and the where the awardee is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under a provision of the Atomic Energy Act of 1954.</p> <p>Where a U.S. company has been awarded a U.S. defense contract, or DOE contract under a national security program, if such contract requires access to proscribed information, no entity controlled by a foreign government may merge with, acquire, or take over that company absent conclusive CFIUS review.</p> <p>The term "entity controlled by a foreign government" includes—(1) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and (2) any individual acting on behalf of a foreign government, as determined by the Secretary concerned. The term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.</p>	If a firm can't get the necessary waiver it can't be awarded the contract.

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Banking			
International Banking Act (IBA), as amended by the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA)	Federal Reserve Board (FRB) Office of the Comptroller of the Currency (OCC)	<p>FBSEA generally precludes U.S. branches of foreign banks from engaging in domestic retail deposit-taking, except for those branches that were insured by the Federal Deposit Insurance Corporation at the time FBSEA was enacted (i.e. 1991). Consequently, a foreign entity that wishes to engage in full deposit-taking must establish one or more domestic bank subsidiaries.</p> <p>With limited exception, no foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company (CLC), without the prior approval of FRB. FRB is prohibited from approving such an application unless it determines that the foreign bank is “subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country”—commonly referred to as the “comprehensive supervision standard.” If FRB is unable to find that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, FRB may still approve an application by the bank if, among other things, the appropriate authorities in the home country are actively working to establish arrangements for the consolidated supervision of such bank.</p>	<p>If FRB finds that the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, and the appropriate authorities in the home country are not making demonstrable progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis, FRB may order the closing of (or, in the case of federally licensed branches or agencies, to recommend that the OCC close) any U.S. offices of a foreign bank</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Bank Holding Company Act (BHCA), as amended	Federal Reserve Board (FRB)	<p>The BHCA governs any entity (foreign or domestic) that is or seeks to become a “bank holding company.” As a result of the IBA, the BHCA restrictions on nonbanking activities generally apply to all foreign banks with U.S. banking operations. Among other things, the BHCA:</p> <ol style="list-style-type: none"> 1. Requires that FRB give prior approval for certain transactions involving the acquisition of ownership or control of the voting shares of a bank or the assets of a bank. 2. Imposes limitations on the types of nonbanking organizations a BHC may own. 3. Imposes limitations on the types of nonbanking activities a BHC may engage in directly or indirectly through subsidiaries. <p>BHCA prohibits bank holding companies from engaging in certain nonbanking activities but provides some exemptions for foreign bank holding companies.</p> <p>A company becomes a “bank holding company,” if it has control over any bank or any company that is or becomes a bank holding company. Any company has control over a bank if:</p> <ol style="list-style-type: none"> 1. it directly or indirectly owns, controls or has power to vote 25% or more of any class of voting securities of the bank or company; 2. it controls in any manner the election of a majority of the board of directors or trustees of the bank or company; or 3. FRB determines that it directly or indirectly exercises controlling influence over the management or policies of the bank or company. 	<p><i>Criminal penalty</i></p> <p>A person who knowingly violates any provision of this law shall be imprisoned not more than 1 year, fined not more than \$100,000 per day for each day during which the violation continues, or both.</p> <p>A person who, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this law shall be imprisoned not more than 5 years, fined not more than \$1,000,000 per day for each day during which the violation continues, or both.</p> <p><i>Civil penalty</i></p> <p>Any company which violates, and any individual who participates in a violation of, any provision of this law, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
Not specific to an economic sector			
Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (FINSAs)	Committee on Foreign Investment in the United States (CFIUS) Interagency group with Department of Treasury as the lead agency	<p>Section 721 authorizes the President to take action to suspend or prohibit any merger, acquisition, or takeover that is proposed or pending by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the U.S. and that threatens to impair the national security of the U.S.</p> <p>Section 721 establishes a process for reviewing a foreign acquisition of a U.S. business, which begins with a voluntary notice by the companies of covered transactions (though CFIUS may also unilaterally initiate a review). In response to any notice of a covered transaction, CFIUS conducts a 30-day review to identify and resolve any national security concerns. CFIUS may also conduct an additional 45-day investigation in certain circumstances. Should CFIUS identify national security concerns associated with a transaction during the review or investigation periods, it may negotiate or impose measures intended to mitigate any such concern. Finally, CFIUS may choose to forward the transaction to the President with a recommendation for possible action if national security concerns remain unresolved at the conclusion of an investigation. The President may decide to suspend or prohibit the acquisition only if there is credible evidence that the foreign entity exercising control might take action that threatens national security, and provisions of law, other than Section 721 and the International Emergency Economic Powers Act, do not provide adequate and appropriate authority to protect the national security. FINSAs requires that CFIUS provide an annual report to Congress on covered transactions on which action has been concluded, as well as report promptly to Congress after each such case.</p>	<p>Any person who, after the effective date, intentionally or through gross negligence, submits a material misstatement or omission in a notice, or makes a false certification, may be liable for a civil penalty not to exceed \$250,000 per violation. Any person who, after the effective date, intentionally or through gross negligence, violates a material condition or provision of a mitigation agreement, may be liable for a civil penalty not to exceed \$250,000 per violation or the value of the transaction, whichever is greater.</p> <p>The statute provides for the President or CFIUS to initiate a review of a covered transaction that was previously reviewed or investigated if any party submitted false or misleading material information or omitted material information in connection with the review or investigation, or, under certain circumstances, if any party intentionally materially breaches a mitigation agreement or condition.</p>

**Appendix II: Summaries of Key Federal
Foreign Investment Laws**

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
International Investment and Trade in Services Survey Act (IITSSA)	Department of Commerce Department of Treasury	<p>Under IITSSA, a report is required by a U.S. business enterprise when a foreign person acquires (directly or indirectly) through an existing U.S. affiliate, a 10 % or more voting interest in that enterprise, including an enterprise that results from the direct or indirect acquisition by a foreign person of a business segment or operating unit of an existing U.S. business enterprise that is then organized as a separate legal entity, or by the existing U.S. affiliate of a foreign person when it acquires a U.S. business enterprise or operating unit that the existing U.S. affiliate merges into its own operations. Under certain circumstances, quarterly reports must be filed concerning direct financial transactions between a U.S. affiliate and its foreign parent group.</p> <p>The act also calls for regular surveys of foreign portfolio investment, meaning investments of less than 10% in U.S. enterprises.</p>	<p><i>Civil penalty</i></p> <p>Failure to file the required report carries a civil penalty of not less than \$2,500.00, and not more than \$27,000</p> <p><i>Criminal penalty</i></p> <p>Willful failure to report will result in a fine of no more than \$10,000.00, imprisonment for up to a year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such a violation, upon conviction, may be punished by a similar fine, imprisonment, or both.</p>
Tax Equity and Fiscal Responsibility Act of 1982, as amended	Department of Treasury, Internal Revenue Service	Domestic corporations that are at least 25% foreign owned or a foreign corporations doing business in the U.S. must file an informational return with the IRS disclosing reportable transactions, and maintain records relating to transactions between the domestic corporation and the foreign-related parties.	A reporting corporation that fails to timely file any required information or fails to maintain records as required shall pay a penalty of \$10,000 for each taxable year with respect to which the failure occurs. A continuing failure can result in additional penalties.

Appendix II: Summaries of Key Federal Foreign Investment Laws

Federal law	Reviewing body	Requirements	Consequences of noncompliance and potential penalties for violations
International Emergency Economic Powers Act	Office of the President of the United States	The International Emergency Economic Powers Act (IEEPA) authorizes the President to prohibit certain transactions or block any property in which any foreign country or foreign national has any interest. It grants the President broad authorities to “deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States.” Before exercising these authorities, IEEPA requires the President to declare a national emergency. National emergency declarations are governed by the National Emergencies Act (NEA). IEEPA sanctions are typically imposed pursuant to Executive Order.	<p>A civil penalty may be imposed on any person who commits an unlawful act under the Act in an amount not to exceed the greater of \$250,000 or an amount that is twice the amount of the transaction that is the basis of the violation. The Department of the Treasury has issued guidelines that implement these statutory penalty authorities.</p> <p>Criminal penalties provide that a person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in IEEPA shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.</p>

Source: GAO analysis of relevant statutes.

Appendix III: Comments from the U.S. Department of Agriculture



United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service
Agency

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May 6, 2009

TO: Mike McCann
Director
Operations Review and Analysis Staff

FROM: Joy Harwood *JH*
Director
Economic and Policy Analysis Staff

SUBJECT: Farm Service Agency's Response to the General Accountability Office
Sovereign Wealth Funds Report

The Farm Service Agency (FSA) agrees with the General Accountability Office (GAO) findings and recommendation regarding the GAO report, "Sovereign Wealth Funds: Laws Limiting Foreign Investment Affect Certain U.S. Assets and Agencies Have Processes for Addressing Key Elements of Enforcement." Now that FSA's Agricultural Foreign Investment Disclosure Act group is aware of additional sources of information from other government departments and private data applicable to foreign investors, we will use them to enhance our ability to detect changes in company ownership. We will regularly search sources such as the Securities and Exchange Commission as well as Bloomberg, Dealogic, Lexis-Nexis, and Thomson Reuters.

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Appendix IV: GAO Contacts and Staff Acknowledgments

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Acknowledgments

In addition to the contacts named above, Cody Goebel, Assistant Director; Celia Thomas, Assistant Director; Tania Calhoun; David Dornisch; Patrick Dynes; Nina Horowitz; Richard Krashevski; Michael Maslowski; Marc Molino; Omyra Ramsingh; and Jeremy Schwartz made major contributions to this report.

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