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SOVEREIGN WEALTH FUNDS

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

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Highlights

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.
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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.