

United States Senate

WASHINGTON, DC 20510

May 16, 2017

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

We are writing to request that the Government Accountability Office (GAO) review the approach taken by the Committee on Foreign Investment in the United States (CFIUS) to examine real estate transactions, and assess whether and how CFIUS addresses the full range of national security challenges such transactions may pose.

As you know, CFIUS¹ was designed to review transactions that could result in control of a U.S. business by a foreign person, in order to determine the effect of such transactions on the national security of the United States. While the United States has been a top destination for foreign investments across sectors, in the last year global real estate investors spent over \$60 billion on American commercial properties and comprised 13% of total transactions in the U.S. commercial real estate market (up from 10% just three years ago).² China is a leading purchaser of U.S. commercial real estate, topping the list of foreign investors in this sector for the second year in a row.³

Some of these investments have raised national security concerns, including due to the proximity of the property to other sensitive properties such as military bases or other government buildings, or because of unique security risks associated with individuals residing at or frequenting the property.⁴ More generally, the real estate sector has recently been the subject of increased scrutiny by U.S. regulators concerned about the proliferation of transactions involving shell companies and the use of real estate purchases as a conduit for money laundering and other illicit activity. Additional national security considerations may be introduced by the fact that several senior Administration officials, including the President himself, retain ownership of significant

¹ Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (P.L. 110-49), and the regulations at 31 CFR part 800.

² "More Hurdles Ahead for Foreign Investors," National Real Estate Investor (Feb. 15, 2017).

³ "China investment in foreign real estate hits record \$33bn", Financial Times (Jan. 29, 2017).

⁴ CFIUS Concerns Could Stall Anbang's \$12.8B Starwood Play, Law360 (Mar. 14, 2016) (discussing proximity to governmental and military facilities); *see also* GAO, Federal Real Property: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners (January 2017), at 9 (describing security risks related to cybersecurity in foreign owned buildings leased to U.S. government).

real estate holdings and maintain multiple residences that could be the subject of foreign acquisitions in the future.⁵

In recent years, CFIUS has received a small number of applications related to real estate acquisitions. However, there are growing questions about the impact these transactions could have on U.S. national security.^{6,7} The ownership structures and political ties of some prominent Chinese investors, such as Anbang Insurance Group, are murky at best.⁸ The proliferation of shell companies purchasing high-end U.S. real estate can mask the true parties to a real estate transaction and make it difficult for CFIUS to conduct a complete and accurate assessment of national security risk. In addition, in CFIUS' most recent annual report, it raised concerns about the leasing of high-security space from foreign companies; GAO also specifically noted this risk in the context of leasing arrangements with hidden beneficial owners.⁹

To ensure that CFIUS is equipped to analyze the full range of national security threats posed by foreign acquisitions of U.S. real estate, we would like GAO to assess the following issues:

- Because CFIUS is a voluntary process, based on available data, what percentage of foreign acquisitions of U.S. real estate file for CFIUS approval?
- How does CFIUS currently define national security threats with regard to real estate transactions, be they residential, commercial, or industrial properties, and what criteria does it apply to determine whether or not a real estate transaction constitutes or has the potential to constitute such a threat?
- Within the CFIUS definition of transactions that may constitute national security threats, are there types of foreign acquisitions of real estate that do not meet CFIUS' definition of "covered transaction"?
- Within the CFIUS definition of transactions that may constitute national security threats, are there types of real estate transactions that do not meet CFIUS' definition of "control of a U.S. business by a foreign person"?
- Please detail the real estate transactions involving foreign entities have been subject to CFIUS review in the last ten years. For each transaction, please provide basic information on the transaction including the approximate dates of review, the type of real estate (residential, commercial, or industrial), the national security considerations that were considered relevant to the review, and the disposition of the case.
- What information does CFIUS use, and from which sources, to identify the relevant parties to a real estate transaction when evaluating the transaction's national security implications, such as the true beneficial owners of shell companies?
 - What role if any does the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) play in CFIUS investigations of real estate transactions?

⁵ A major transaction involving Chinese investors seeking to acquire a property in New York owed by the family of senior White House advisor Jared Kushner was only recently scuttled. "Kushner company, Chinese firm call off development deal", CNN (Mar. 29, 2017). See also, "Trump Condos Worth \$250M Pose Potential Conflict", USA Today (April 20, 2017).

⁶ "CFIUS Looming Larger in Sensitive Property Deals," Law360 (Oct. 15, 2015).

⁷ Treasury Department, CFIUS Annual Report to Congress (2016).

⁸ "A Chinese Mystery: Who Owns a Firm on a Global Shopping Spree?", New York Times (Sep. 2, 2016)

⁹ GAO at 13.

- How does CFIUS define the beneficial owner of a shell company?
- When evaluating a real estate transaction, how does CFIUS obtain information on the foreign acquirer's ties to a foreign government, including investments by entities or individuals with ties to a foreign government?
- When evaluating a real estate transaction, how does CFIUS determine if the transaction of a property would give the foreign acquirer access to U.S. government employees, facilities and functions including information technology and communications services used by the U.S. Government?
- What factors does CFIUS use to evaluate whether a foreign acquisition of a property involving a senior Administration official, including the President, might create a national security risk by influencing or compromising the ability of those officials to fulfill their duties?
- Does CFIUS have sufficient resources to review foreign real estate transactions in light of the rising tide of foreign direct investment that is entering the United States, in particular with respect to real estate?

We appreciate your attention to this request and your cooperation as we seek more information on this important matter. Please provide recommendations to enhance the CFIUS review process of foreign acquisitions of U.S. real estate. To the extent necessary and appropriate, provide both classified and public versions of the report on this matter.

Should you have additional questions regarding this request, please contact Elissa Alben, International Trade Counsel for Senate Finance Committee Ranking Member Ron Wyden, at (202) 224-4515.

Sincerely,



Ron Wyden
Ranking Member
Senate Finance Committee



Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing, and
Urban Affairs



Claire McCaskill
Ranking Member
Senate Homeland Security and Government
Affairs Committee