

Closing the FARA Retroactive Registration Loophole

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Earlier this month, and following a string of recent bills introduced to reform the Foreign Agents Registration Act (FARA), Representative Ben Cline (R-VA) introduced the Foreign Agents Transparency Act ("Transparency Act") with several co-sponsors including Representatives John Moolenaar (R-MI), Raja Krishnamoorthi (D-IL), Dusty Johnson (R-SD), Rob Wittman (R-VA), and Don Davis (D-NC). The Transparency Act serves as companion legislation to a bipartisan bill introduced by Senators Chuck Grassley (R-IA) and Gary Peters (D-MI) in March, currently under consideration by the Senate Committee on Foreign Relations.

The Transparency Act would amend FARA to enable the U.S. Department of Justice (DOJ) to require an unregistered foreign agent to retroactively register its activities under FARA even after the agent's relationship with its foreign principal ceases. The bill's proposed amendments would apply to any persons or entities considered to be "agents of a foreign principal," as defined under FARA, beginning on the date of the Transparency Act's enactment or in the five-year period prior to it. The Transparency Act would also direct the Attorney General to submit annual reports to Congress outlining "covered action[s]" conducted to enforce FARA.

The Transparency Act aims to provide DOJ with the legal authority to enforce retroactive registrations under FARA in the wake of the U.S. District Court for the District of Columbia decision in *Attorney General of the United States vs. Wynn*. In October 2022, U.S. District Judge James E. Boasberg dismissed the action for failure to state a claim and noted that he was bound by D.C. Circuit precedent (i.e., *U.S. v. McGoff*), which interpreted an ambiguous FARA provision to mean that the continuing criminal offense of a violation ends on the date

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that lobbying activities cease. A three-judge panel of the D.C. Circuit subsequently upheld the dismissal, agreeing that the defendant no longer needed to register under FARA for their alleged lobbying/political activities on behalf of the People's Republic of China. Although DOJ filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit for a rehearing en banc in October 2024, the petition was denied that December.

The Transparency Act is similar to the Retroactive Foreign Agents Registration Act introduced by Senator Grassley and others during the 118th Congress, which ultimately died in committee. The most significant difference, and one that could help with its passage, is that the Transparency Act would allow DOJ to require retroactive registrations for any unregistered FARA activity conducted within the five-year period prior to its enactment date, thereby limiting the lookback period. The Retroactive Foreign Agents Registration Act included no such time limitation.

The recent introduction of several bills to bolster the transparency and accountability of foreign lobbying in the United States demonstrates Congress' continued focus on the administration and enforcement of FARA. For example, Senator Grassley authored a letter to Attorney General Pam Bondi in February 2025 soliciting "information regarding the Justice Department's criminal and civil enforcement of FARA during the past administration." In order to "conduct independent and objective oversight," Congress requested information such as the number of FARA civil enforcement cases that DOJ opened and closed as well as the number of FARA criminal enforcement cases DOJ opened and how many resulted in prosecution. Senator Grassley asked that DOJ's responses be provided by the end of February.

Given Congress' continued interest in foreign influence activities in the United States, together with the considerable criminal and civil penalties for FARA violations and the reputational risks associated with noncompliance, it is prudent that persons and entities engaging in political and quasi-political activities for foreign interests employ robust compliance policies and practices as well as keep abreast of new FARA developments.

Wiley's FARA Handbook provides additional information about FARA and what may be on the horizon for enforcement.

For more information about FARA and Wiley's related capabilities, please contact the attorney listed on this alert.