

# FARA: 2023 Review and 2024 Preview

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Aggressive enforcement of the Foreign Agents Registration Act (FARA) continued last year, and that trend shows no signs of receding in 2024. The U.S. Department of Justice (DOJ) in 2023 filed its first affirmative civil enforcement lawsuit in over 20 years and brought a number of civil and criminal enforcement actions under FARA. Recent FARA indictments also reflect a heightened focus on certain priority regions in which foreign principals are based – e.g., China, the Middle East. In addition to enforcement actions, other key FARA developments over the past year include a continued focus on transparency and new FARA-related legislative proposals which are detailed below.

## Continued DOJ Focus on Transparency and Enforcement

DOJ continued to focus on enhancing transparency and strengthening FARA enforcement in 2023. These efforts include a number of enforcement actions against high-profile individuals, including criminal charges against a sitting Senator, a Grammy award-winning musician, and a Hunter Biden whistleblower for FARA violations. In 2023, DOJ also issued a number of advisory opinions clarifying the FARA registration triggers (foreign principal, agency, and covered activity) as well as providing guidance on the exemptions to FARA registration.

Additionally, DOJ is in the process of clarifying and modernizing FARA's implementing regulations, with the proposed changes to be issued for public comment in the coming months. At the American Conference Institute's (ACI) FARA Forum in November 2023, DOJ previewed some of these likely changes, including a potentially significant narrowing of the "not predominantly serving a foreign interest" prong of FARA's trade/commerce exemption. Under DOJ's current approach, this prong can be used for foreign agents engaged

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in political or other FARA activity on behalf of a foreign principal that is solely in furtherance of the trade or commercial interests of that foreign principal, provided the activity is not directed/controlled by a foreign government/foreign political party and that the activity is not benefiting a political or public interest of either entity. Under DOJ's new approach, the agency would require that the activity is predominantly benefitting a U.S. person or U.S. entity, making it more of a domestic interest exemption. Although it is unclear if sovereign wealth funds will be referenced in any of the proposed changes, DOJ also indicated at ACI's FARA Forum that it plans to take a closer look at sovereign wealth funds.

### **Heightened Focus on Foreign Influence on College Campuses**

There has been a heightened focus on foreign influence among college campuses across the United States. Recent concerns among U.S. lawmakers have been centered around the Chinese Communist Party's (CCP) influence on American students. For instance, in December 2023, a group of Republican Senators sent a letter to Attorney General Merrick Garland suggesting that the Chinese Government is using Chinese Students and Scholars Associations (CSSAs) across campuses to influence U.S. academic institutions and push the political agenda of the CCP. According to the letter, there are currently 150 known CSSA chapters on U.S. college campuses, many of which receive funding and guidance from Chinese Embassies, and "often serve as extensions of China's party-state." According to the letter, there is "clear evidence that CSSAs act as an arm of the PRC for the purpose of shaping U.S. policy and public opinion, and the United States should therefore evaluate whether they are required to register as foreign agents." The letter requests that DOJ provide a response within 30 days outlining their efforts to assess and investigate CSSA's influence on U.S. campuses, and whether it should be registered under FARA. This most recent letter reflects a continuing heightened focus of U.S. policymakers, among others, on foreign influence, including foreign funding, on college campuses.

### **Nexus with Section 951**

DOJ has continued to use 18 U.S.C § 951 (Section 951) as a tool to address foreign influence in the United States. Section 951, like FARA, targets activities undertaken by foreign agents in the United States. It centers on criminal enforcement of violations and provides criminal penalties for certain agents of foreign governments who act in the United States without first notifying the Attorney General. Registration under FARA satisfies the notification requirement of Section 951. Notably, while Section 951 defines foreign principals to include foreign governments and officials, FARA defines foreign principals more broadly to include foreign companies and foreign individuals. In April, DOJ charged Russian national Vladimirovich Cherkasov with several counts, including conspiracy to act as an agent of the Russian government without notifying the Attorney General in violation of Section 951. We anticipate that prosecutions under Section 951 in conjunction with or in lieu of FARA will continue to become increasingly common in 2024.

### **FARA Legislative Developments**

Although Congress did not pass significant FARA legislation in 2023, a number of proposals with bi-partisan support are pending in the 118<sup>th</sup> Congress, including the following:

- The Foreign Agents Disclosure and Registration Enhancement Act, which was re-introduced by Senator Grassley (R-IA). First introduced in 2019, the bill would amend FARA by reinforcing the tools available to DOJ investigating potential FARA violations and by increasing the penalties for noncompliance. Additionally, the bill would improve advisory opinion transparency and designate oversight abilities to the Government Accountability Office (GAO). Among other things, the bill requires the GAO to study the extent to which the Lobbying Disclosure Act (LDA) exemption is being used to circumvent registration under FARA.
- Another of Senator Grassley's proposals included the reintroduction of the Disclosing Foreign Influence in Lobbying Act, which passed the Senate in June but was held up in the House. The bill would amend the LDA to require disclosure of foreign governments and/or foreign political parties participating in the direction, planning, supervision, or control of lobbying activities. This is in addition to an existing requirement that LDA registrants disclose any organization contributing more than \$5,000 in a quarterly period to fund the lobbying activities of the registrant.
- In a continuing effort to bolster the transparency and accountability of foreign lobbying in the U.S., the Retroactive Foreign Agents Registration Act (RFARA) was newly introduced by a group of bipartisan Senators along with companion legislation in the House. This legislation would require individuals/entities who fall within the purview of FARA to register as foreign agents even after ceasing to engage in FARA registerable activity for a foreign principal. The bill aims to provide DOJ with explicit legal authority to enforce retroactive registrations under FARA in the wake of the 2022 U.S. District Court for the District of Columbia decision in *Attorney General of the United States vs. Wynn*. That decision is currently on appeal at the U.S. Court of Appeals for the DC Circuit.
- Other notable legislation included the Preventing Adversary Influence, Disinformation and Obscured Foreign Financing Act (PAID OFF Act). Originally introduced in October 2022, the bill would, if passed, amend FARA to remove both the trade/commerce and the LDA exemptions to FARA where a foreign principal is deemed to be a foreign adversary, which have been defined by executive order as China, Cuba, Iran, North Korea, Russia, and Syria.

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We expect that FARA will continue to make headlines in 2024 as the Biden Administration, Congress, and DOJ remain focused on FARA enforcement and reform. DOJ is expected to open a comment period through a Notice of Proposed Rulemaking on regulatory changes that would modernize and clarify the scope of FARA and the registration requirements for foreign agents. These highly awaited proposed regulatory changes could be published at any time. Important developments in response to the D.C. Circuit Court decision in *Wynn* are also potentially on the horizon, including a decision by the Appellate Court and potential movement on legislation to address retroactive FARA registrations.

Wiley attorneys routinely handle matters on all aspects of FARA compliance, from counseling clients on whether registration is required, to assisting clients with completing and executing their FARA filings, and recently reissued its FARA Handbook, available [here](#). For more information on FARA and our related capabilities, please contact the lawyer listed on this alert.

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*Maddie Van Aken, a Legislative and Reporting Coordinator at Wiley Rein LLP, contributed to this alert.*