

Senators Look to Close Prominent FARA Registration Exemptions by Introducing STRATEGIC Act

September 23, 2024

On September 19, a group of Republican Senators led by Foreign Relations Committee Ranking Member Jim Risch (R-ID) introduced the STRATEGIC Act of 2024 to combat Chinese Communist Party (CCP) influence within the United States. The bill would, among other things, reform the Foreign Agents Registration Act (FARA) to remove certain registration exemptions and strengthen the U.S. Department of Justice's (DOJ) investigation capabilities with respect to FARA.

If enacted, this legislation would remove two prominent registration exemptions under FARA for persons conducting work on behalf of China, Iran, or Russia: the Trade/Commerce exemption and the Lobbying Disclosure Act (LDA) exemption. As the law currently stands, foreign agents acting in furtherance of the *bona fide* trade or commercial interests of a foreign principal may avail themselves of the Trade/Commerce exemption to FARA registration if certain conditions are met (e.g., the activities are not being directed or controlled by a foreign government or a foreign political party). Additionally, foreign agents who are engaged in political activity and who are duly registered under the LDA can avail themselves of the LDA exemption to FARA registration, provided that the political activity is not being undertaken on behalf of a foreign government or foreign political party and it is not principally benefiting such entities. Both the Trade/Commerce and LDA exemptions to FARA have been routinely subject to criticism for being improperly used and have been the subject of several congressional reform efforts in recent years.

Authors

Tessa Capeloto
Partner
202.719.7586
tcapeloto@wiley.law

Practice Areas

Foreign Agents Registration Act (FARA)
International Trade
National Security

"This legislation takes strong positions to safeguard U.S. and allied interests and provides actionable provisions that will help us in our strategic competition with China. We cannot wait for more reports and studies – it is time to start implementing policies," Sen. Risch said in a joint statement with co-sponsors of the bill.

Aside from removing the two most widely used registration exemptions under FARA for agents of China, Iran, or Russia, the legislation would bolster DOJ's civil investigation authority and resources.

"China is leveraging every tool at its disposal in an attempt to leapfrog America as the world's leading superpower. This legislation takes a resolute stance against the Chinese Communist Party's global influence campaign and protects American interests," said Sen. Chuck Grassley (R-IA). "It also advances a national security goal I've pushed for many years: adding teeth to FARA for the first time in almost 60 years. This will provide DOJ with the tools to more effectively and efficiently enforce the law, limiting the ability of the Chinese Communist Party and other foreign entities to secretly peddle their policy interests through public relations firms and lobbyists."

The bill also aims to strengthen U.S. think tank funding and research transparency, increase oversight of U.S.-funded research with China, and strengthen U.S. support for Taiwan and partner countries facing threats from China.

Lawmakers introduced a number of FARA reform bills in 2023 with bipartisan support, but none have passed the House or Senate thus far. Those bills include the PAID OFF Act, the Disclosing Foreign Influence in Lobbying Act, the Foreign Agents Disclosure and Registration Enhancement Act, and the Retroactive Foreign Agents Registration Act. This congressional effort reflects an increased focus by U.S. policymakers to ensure that FARA is fully and effectively enforced, and also highlights a growing use of FARA to address the perceived rise in CCP influence and other foreign influence in the United States.

Senator Risch is joined on the STRATEGIC Act by Senators Pete Ricketts (R-NE), Todd Young (R-IN), John Barrasso (R-WY), Mike Crapo (R-ID), Bill Cassidy (R-LA), Dan Sullivan (R-AK), Mitt Romney (R-UT), John Cornyn (R-TX), Chuck Grassley (R-IA), Shelley Moore Capito (R-WV), and Bill Hagerty (R-TN).

Wiley's FARA Handbook provides additional information on FARA. Please contact the FARA attorneys listed on this alert with any questions.

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