

ALERT

Sens. Grassley and Peters Introduce Foreign Agents Transparency Act to Enable DOJ to Require Retroactive FARA Registration

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On March 13, 2024, Senator Chuck Grassley (R-IA), Chairman of the Senate Judiciary Committee, and Senator Gary Peters (D-MI), Ranking Member of the Homeland Security and Governmental Affairs Committee, introduced the Foreign Agents Transparency Act (Transparency Act). The bipartisan bill follows closely behind two other pieces of legislation recently reintroduced by Senators Grassley and Peters to strengthen the administration and enforcement of the Foreign Agents Registration Act (FARA) – the Lobbying Disclosure Improvement Act and the Disclosing Foreign Influence in Lobbying Act, both of which address the Lobbying Disclosure Act exemption to FARA registration.

The Foreign Agents Transparency Act would amend FARA to allow the U.S. Department of Justice (DOJ) to require that an unregistered foreign agent retroactively register its activities under FARA even after the agent's relationship with its foreign principal has ceased. The proposed amendments would apply to any persons or entities that are "agents of a foreign principal" as defined under FARA either on or after the date of the Transparency Act's enactment or in the five-year period prior to the Transparency Act's enactment. The Transparency Act would also require that the Attorney General submit annual reports to Congress regarding compliance with actions taken 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 2022 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

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Practice Areas

Foreign Agents Registration Act (FARA)
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Judge James E. Boasberg dismissed the action for failure to state a claim, noting that he was bound by D.C. Circuit precedent (*U.S. v. McGoff*), which interpreted an ambiguous FARA provision to mean that the continuing criminal offense of a FARA violation ends on the date that lobbying activities cease. A three-judge panel of the D.C. Circuit subsequently upheld the dismissal, agreeing that the defendant no longer had an ongoing obligation to register under FARA for their alleged lobbying/political activities on behalf of the PRC. 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 in December.

Although the Transparency Act is very similar to the Retroactive Foreign Agents Registration Act that was introduced by Sen. Grassley and others in the 118th Congress, but ultimately unsuccessful, there are a few differences. 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 prior to enactment. 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 interest and focus on the administration and enforcement of FARA. In fact, on February 14, 2025, Sen. Grassley sent a letter to Attorney General Pam Bondi "requesting information regarding the Justice Department's criminal and civil enforcement of FARA during the past administration." Among other information requested so that "Congress may conduct independent and objective oversight" include the "number of FARA civil enforcement cases that the Justice Department opened" and "closed" as well as the "number of FARA criminal enforcement cases the Justice Department opened" and "how many resulted in prosecution." Sen. Grassley requested that responses be provided by February 28, 2025.

Given Congress' continued interest in foreign lobbying and influence activities in the United States, together with the significant criminal and civil penalties for FARA violations and the reputational risks associated with noncompliance, it is important that persons and entities that are engaged in political and quasi-political activities for foreign interests maintain robust FARA compliance policies and practices, and keep abreast of new FARA developments.

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

For more information on FARA and our related capabilities, please contact the attorney listed on this alert.

Zachary Roten, an International Trade Specialist at Wiley Rein LLP, contributed to this alert.