

# FARA Winds Blowing Towards More Lenient Enforcement?

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Mere weeks after the Department of Justice (“**DOJ**”) issued [proposed revised regulations](#) implementing the Foreign Agents Registration Act (“**FARA**”), guidance from the new administration has complicated the enforcement forecast. As Willkie has documented in the [FCPA context](#), Attorney General Pam Bondi had a busy first day in office, issuing 14 memoranda describing the priorities of the DOJ under the second Trump administration. Among those is [a memorandum](#) entitled “General Policy Regarding Charging, Plea Negotiations, and Sentencing” (the “**General Policy Memo**” or the “**Memo**”). The General Policy Memo touches upon a broad range of subjects under DOJ’s purview, and makes specific mention of FARA. In a section entitled “Shifting Resources in the National Security Division,” the General Policy Memo provides that “recourse to criminal charges under [FARA] shall be limited to instances of alleged conduct similar to more traditional espionage,” and that the “FARA Unit[ ] shall focus on civil enforcement, regulatory initiatives, and public guidance.” The General Policy Memo also directed the disbanding of the FBI’s Foreign Influence Task Force (“**FITF**”), whose mission had been to identify and counteract malign foreign influence in the United States, as well as the DOJ National Security Division’s Corporate Enforcement Unit.

**I. Scaled-Back Enforcement? Maybe...**

While most immediate commentary has focused on the apparent shift away from enforcement of FARA, registrants and potential registrants should exercise caution in adjusting their compliance posture in response to this directive. The General Policy Memo directs line prosecutors within DOJ to focus criminal enforcement on fact patterns “similar to more traditional espionage,” but the Memo also instructs the FARA Unit to focus on “civil enforcement, regulatory initiatives, and public guidance.” This refocusing may not net out to reduced compliance concerns for most registrants.

Even though Attorney General Bondi’s DOJ appears poised to de-prioritize criminal enforcement of FARA, the bar for a successful criminal FARA prosecution was already quite high (requiring the government to prove that the defendant knowingly violated the law). For most registrants (or prospective registrants) the most relevant compliance question is not exposure to criminal penalties, but the likelihood that DOJ will use its civil enforcement authority to request significant amounts of information or compel registration.<sup>1</sup> In theory, the Department’s de-emphasizing criminal enforcement would leave more bandwidth to devote to civil enforcement matters and compliance audits traditionally at the heart of FARA enforcement.

**II. Wither the FARA NPRM?**

Perhaps the best bellwether for the intentions of the Bondi DOJ with respect to FARA will be the fate of the recently released [proposed regulations](#). As we noted at the time, the proposed regulations appear to narrow the availability of the most oft-relied upon exemption, the so-called “commercial exemption,” and were likely to receive significant public comment. With the opportunity for public comment closing in early March, the proverbial ball will soon be in DOJ’s court.

The General Policy Memo specifically identifies “regulatory initiatives” as a priority for the FARA Unit going forward, perhaps signaling that the regulatory re-write will survive. And, while there has been some [turnover](#) among leadership of the National Security Division, there have not been public reports that the leadership or the career line attorneys within the FARA Unit have changed. Accordingly, the institutional knowledge and understanding of FARA that underpin the proposed regulations appear to remain largely in place, for now.

**III. What Next?**

In the immediate term, we urge FARA registrants and prospective registrants not to make drastic changes to their registration or compliance posture. Although the General Policy Memo certainly signals a de-emphasis on foreign influence and national security-related white collar crime (through, for example, the disbanding of the FITF and

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<sup>1</sup> Note, however, that, at least within the District of Columbia, the Department’s ability to compel registration is limited to ongoing conduct. *Attorney General of the United States v. Wynn*, No. 22-5328, June 14, 2024 (D.C. Cir.). A party can effectively moot a civil FARA enforcement proceeding (within D.C.) by halting the offending behavior. DOJ, at least under the prior administration, had been steadfast that *Wynn* was binding only within D.C., however. Currently, FARA does not include monetary civil penalties.

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Corporate Enforcement Unit), the regulated community should wait to see how the changing priorities are reflected in DOJ's efforts before refocusing their own efforts.

As noted above, we expect additional signals of the Trump Administration's intent to be forthcoming. The deadline for public comment on the proposed regulations is March 3, and DOJ's response (or lack thereof) will be telling. Additionally, in recent years, the DOJ has supported statutory reform of FARA that has garnered bi-partisan backing on Capitol Hill (Senator Grassley and now-Secretary of State Rubio have been notable proponents). Whether DOJ continues the push to revise the statute during the 119th Congress—and indeed whether Congress maintains its interest in the matter—could set the direction for FARA's standing as a priority for at least the next four years.

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