

December 4, 2024

FARA and CFIUS Developments and Enforcement

GIBSON DUNN

MCLE CERTIFICATE INFORMATION

MCLE Certificate Information

- Approved for 1.0 hour General PP credit.
- CLE credit form must be submitted by **Wednesday, December 11th**.
- Form Link: https://gibsondunn.qualtrics.com/jfe/form/SV_9ZHv7pylCOGoUyW
 - Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.
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TODAY'S PRESENTERS



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FARA BACKGROUND

Foreign Agents Registration Act

- Enacted in 1938, in response to concerns over German and other covert influence
- Administered by NSD's Counterintelligence and Export Controls Section
- Requires “certain **agents of foreign principals** who are **engaged in political activities or other activities** specified under the statute to [**register with the Department of Justice** and] **make periodic public disclosure** of their relationship with the foreign principal.” FARA, <https://www.justice.gov/nsd-fara>
- Intended to counter and expose “covert efforts to influence policy and public opinion or to subvert our democracy by sowing division and otherwise distorting the marketplace of ideas.” Dec. 4, 2020 Speech by NSD DAAG Adam Hickey (“Hickey Speech”)
- “The purpose of FARA is **not to restrict speech, but rather to identify it** as the speech of a foreign principal (when fairly attributed), and thus enable American audiences to consider the source when evaluating the message.” DOJ, The Scope of Agency Under FARA

Who Must Register?

- FARA applies to one “**who acts as an agent, representative, employee or servant**, or any person who acts in any other capacity at the order, request, or under the direction or control” of a foreign principal. 22 U.S.C. § 611(c)(1).
- A “**foreign principal**” includes “**a government of a foreign country** and **a foreign political party** . . . And a partnership, association, corporation, organization, or **other combination** of persons organized under the law of or having its principal place of business in a foreign country.” 22 U.S.C. § 611(b).
- A person representing a foreign principal is an agent who must register under FARA if it acts “**at the order, request, or under the control of a foreign principal**” and engages in certain activities within the United States, including:
 - engaging in **political activities** for or in the interests of the foreign principal;
 - acting as **public relations counsel, publicity agent, information-service employee** or **political consultant** for or in the interest of a foreign principal; or
 - **representing the interests** of the foreign principal **before an agency or official** of the United States Government.
- This registration obligation applies unless the agent qualifies for an exemption.
- The burden of proving that the exemption applies rests on the person claiming the exemption.

FARA DEVELOPMENTS

Recent Decision: *Attorney General v. Wynn*, 104 F.4th 348 (D.C. Cir. 2024)

Background:

- Steve Wynn accused of violating FARA after failing to register for alleged past political activities conducted on behalf of China.
- District court dismissed the case, finding that *United States v. McGoff*, 831 F.2d 1071 (D.C. Cir. 1987) governed.
- *McGoff*, in the statute of limitations context, held that an agent's obligation to register under FARA "expires" the day an individual stops acting as a foreign agent.

Holding:

- D.C. Circuit panel unanimously affirmed district court's dismissal.
- *McGoff* governed the case and the government's attempts to distinguish *McGoff* were unconvincing.

Recent Decision: *Attorney General v. Wynn*, 104 F.4th 348 (D.C. Cir. 2024)

Effects:

- FARA does not authorize the DOJ to civilly compel retroactive FARA registration.
- *Wynn* is only binding in the D.C. Circuit, but many FARA prosecutions occur within the D.C. Circuit, and the case may be persuasive authority for other circuits.

Status:

- The Attorney General has sought a rehearing *en banc*.
- D.C. Circuit has not yet ruled on whether it will grant *en banc*.

Recent Prosecutions: Members of Congress

Former Sen. Menendez:

- Served in Congress for three decades, including as senator for New Jersey
- Convicted by a jury on 16 counts of bribery, honest services fraud, extortion, conspiracy, and acting as a foreign agent for the government of Egypt
- Was not charged for failing to register under FARA, but rather for violating a FARA-related statute, 18 U.S.C. § 219
- 18 U.S.C. § 219 makes it a criminal offense for a “public official” of the United States to be or to act as an agent of a foreign principal required to register under FARA

Rep. Henry Cuellar:

- Currently serving as a representative for Texas’s 28th congressional district, a seat he has held since 2005
- Narrowly won reelection despite federal indictment
- Charges include bribery, unlawful foreign influence, and money laundering
- Like Menendez, was not charged under FARA, but rather 18 U.S.C. § 219
- Currently pending in U.S. District Court for the Southern District of Texas

Implications

- Being elected to federal office does not guarantee immunity—and may draw more DOJ scrutiny. Members of Congress can face criminal liability for acting as a foreign agent that would be required to register under FARA.

Recent Prosecutions: Former state aide to N.Y. Gov. Hochul, Linda Sun

Background:

- Worked in state government for roughly 15 years, including as N.Y. Gov. Hochul's deputy chief of staff.
- Arrested on charges including violating and conspiring to violate FARA , and knowingly and willfully acting as an agent of a foreign principal without registering with the Attorney General.
- Alleged activities include:
 - Blocking Taiwanese officials from gaining access to N.Y. state officials;
 - Altering messaging from state officials on important Chinese issues; and
 - Providing unauthorized invitation letters to Chinese government officials.

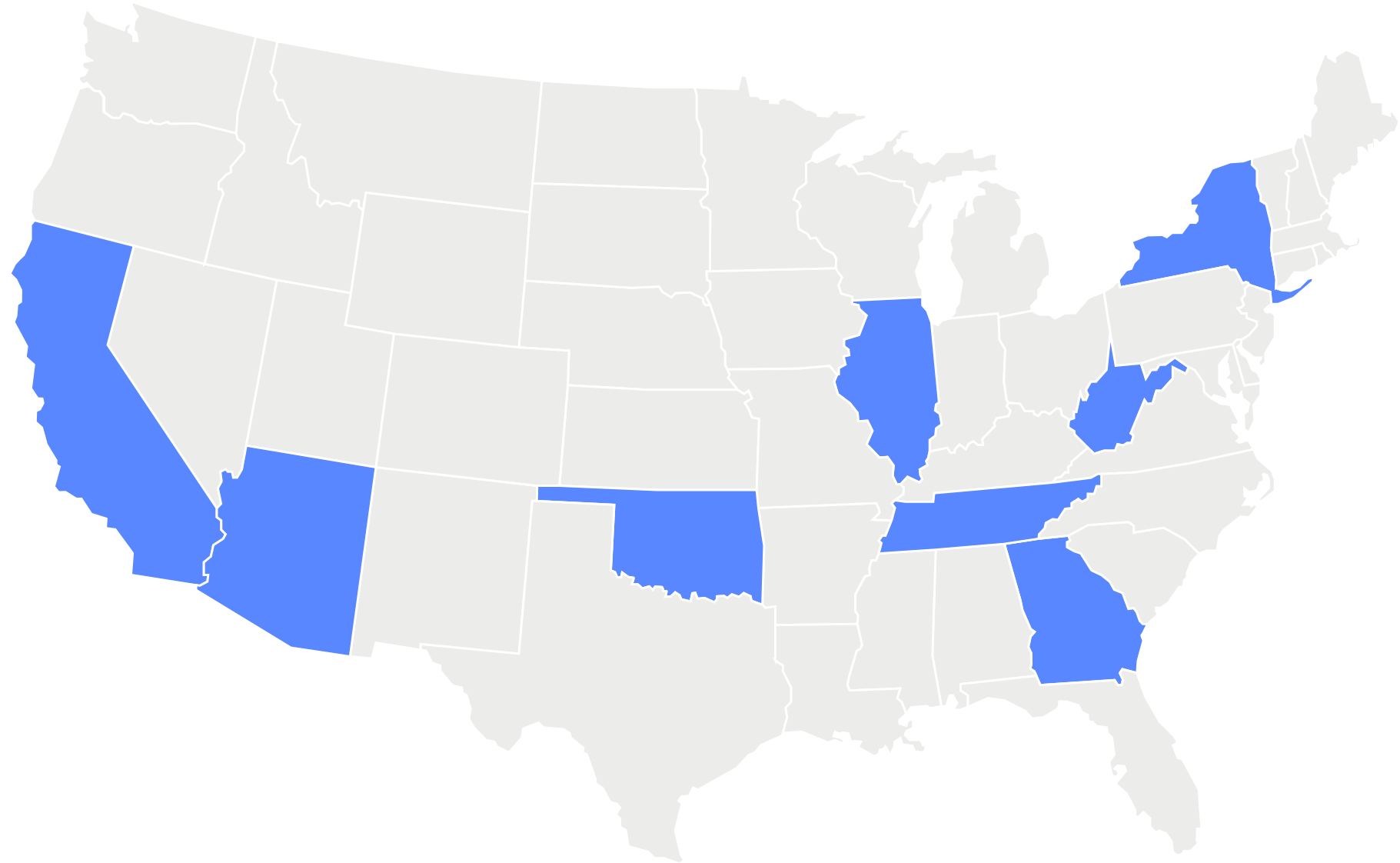
Status:

- Pleaded not guilty on all counts in the indictment, including violating and conspiring to violate FARA.
- Currently pending in U.S. District Court for the Eastern District of New York.

Implications

- State-level conduct is subject to prosecution and gaining more attention.

**“Baby”
FARAs:
State-Level
Regulation**



“Baby” FARAs: State-Level Regulation

Require State-Level Registration:

- Six states have considered bills that would require FARA-like registration on the state level: Arizona, Georgia, Illinois, Oklahoma, Tennessee, and West Virginia
- Some states would limit the registration requirement to only certain countries of concern (e.g., Arizona, Illinois, Oklahoma, and Tennessee)

Narrow or Eliminate FARA Exemptions:

- Some states have considered state bills that would narrow or eliminate commonly relied upon FARA exemptions (e.g., Georgia (commercial exemption), Oklahoma (commercial exemption), Illinois (commercial, LDA, educational pursuits)).

FARA-Related Legislation:

- Other states have considered legislation that would not require registration, but relate to FARA in some way, such as banning registered foreign agents from running for state office (e.g., New York).

FARA-Like State Legislative Proposals

<p>Arizona – H.B. 2506</p>	<ul style="list-style-type: none">• Requires foreign agent registration, but only for activities related to “countries of concern”• “Countries of concern” include China, Hong Kong, Cuba, Iran, North Korea, Russia, Saudi Arabia, and Venezuela• Omits several exemptions, including the commercial, LDA, and religious/scholastic/scientific pursuits exemptions• Requires higher education institutions to adopt expulsion or dismissal policies for students, faculty, researchers, and adjuncts who willfully make a false statement of material fact or omission of material fact in a registration statement• Passed House, held in Senate since April 4, 2024; no further activity
<p>California – S.B. 1151</p>	<ul style="list-style-type: none">• Requires foreign agents to file periodic reports with the California Secretary of State’s office at the same frequency as lobbyists under FARA• Passed Senate, referred to Assembly committee on August 15, 2024; no further activity
<p>Georgia – S.B. 368</p>	<ul style="list-style-type: none">• Requires foreign agent registration• Omits several exemptions, including the commercial, LDA, and religious/scholastic/scientific pursuits exemptions• Bans foreign contributions to political campaigns• Passed Georgia legislature, but vetoed by Gov. Kemp on May 7, 2024; will return to legislature

FARA-Like State Legislative Proposals

<p>Illinois – S.B. 3542</p>	<ul style="list-style-type: none">• Requires foreign agent registration, but only for activities related to “countries of concern”• “Countries of concern” include China, Russia, Iran, North Korea, Cuba, Venezuela, Syria, and “any other entity deemed by the Governor”• Omits several exemptions, including the commercial, LDA, and religious/scholastic/scientific pursuits exemptions• Requires higher education institutions to adopt expulsion or dismissal policies for students, faculty, researchers, and adjuncts who willfully make a false statement of material fact or omission of material fact in a registration statement• Requires retroactive registration for agents going back to January 1, 2014• Introduced in Senate on February 9, 2024, and referred to committee; no further activity
<p>New York – A. 4492</p>	<ul style="list-style-type: none">• Would prohibit anyone who has previously been a foreign agent from holding public office or political party positions• Referred to Assembly committee, January 3, 2024; no further activity

FARA-Like State Legislative Proposals

Oklahoma – H.B. 1150

- Requires foreign agent registration, but only for activities related to “countries of concern”
- “Countries of concern” is defined as “any country designated by the United States Secretary of State as hostile or a Country of Concern”
- Omits several exemptions, including the commercial, LDA, and religious/scholastic/scientific pursuits exemptions
- Requires higher education institutions to adopt expulsion or dismissal policies for students, faculty, researchers, and adjuncts who willfully make a false statement of material fact or omission of material fact in a registration statement
- Requires retroactive registration for agents going back to January 1, 2014
- [Passed House, referred to Senate Rules Committee on April 19, 2024; no further activity](#)

Tennessee – H.B. 1854

- Requires foreign agent registration, but only for activities related to “countries of concern”
- “Countries of concern” include China, Hong Kong, Russia, Iran, North Korea, Cuba, Venezuela, Syria, and “another entity or country so deemed by the governor”
- Omits several exemptions, including the commercial, LDA, and religious/scholastic/scientific pursuits exemptions
- Requires retroactive registration for agents going back to January 1, 2014
- Requires higher education institutions to adopt expulsion or dismissal policies for students, faculty, researchers, and adjuncts who willfully make a false statement of material fact or omission of material fact in a registration statement
- [Withdrawn January 22, 2024](#)

FARA-Like State Legislative Proposals

West Virginia – H.B. 5043

- Requires foreign agent registration
- Omits several exemptions, including the LDA and religious/scholastic/scientific pursuits exemptions, but retains the commercial exemption
- Passed House, referred to Senate Economic Development Committee on February 29, 2024; no further activity

Congressional Legislative Proposals

Narrowing or Eliminating FARA's Exemptions

S. 5131 – STRATEGIC Act of 2024

- **Introduced:** September 19, 2024
- **Sponsors:** Sen. James E. Risch (R-ID), Sen. Pete Ricketts (R-NE), Sen. Todd Young (R-IN), Sen. John Barrasso (R-WY), Sen. Mike Crapo (R-ID), Sen. Bill Cassidy (R-LA), Sen. Dan Sullivan (R-AK), Sen. Mitt Romney (R-UT), Sen. John Cornyn (R-TX), Sen. Chuck Grassley (R-IA), Sen. Shelley Moore Capito (R-WV), Sen. Bill Hagerty (R-TN), Sen. Deb Fischer (R-NE)
- **Current Status:** Introduced in Senate and referred to the Committee on Foreign Relations, 9/19/2024
- **Summary:** Provides DOJ with civil investigatory demand authority; create civil penalties and increase criminal fines; eliminate the commercial, LDA, and “not serving predominately a foreign interest” exemptions for agents whose principal is in China, Russia, or Iran

S. 3443 – Protecting Education from Malign Foreign Influence Act of 2023

- **Introduced:** December 7, 2023
- **Sponsors:** Sen. Marco Rubio (R-FL), Sen. Rick Scott (R-FL), Sen. Tim Scott (R-SC)
- **Current Status:** Referred to the Committee on Health, Education, Labor, and Pensions, 12/7/2023
- **Summary:** Narrows FARA's “Religious, Scholastic, or Scientific Pursuits” exemption, excludes activities promoting a political agenda

Congressional Legislative Proposals

Narrowing or Eliminating FARA's Exemptions

H.R. 1819 – Foreign Influence Transparency Act

- **Introduced:** March 28, 2023
- **Sponsors:** Rep. Joe Wilson (R-SC-2), Rep. Rick W. Allen (R-GA-12), Rep. John R. Carter (R-TX-31), Rep. Brian Babin (R-TX-36), Rep. David Rouzer (R-NC-7)
- **Current Status:** Referred to the Committee on the Judiciary and the Committee on Education and the Workforce
- **Summary:** Would narrow FARA's "Religious, Scholastic, or Scientific Pursuits" exemption, excludes activities promoting a political agenda

S. 434 – PAID OFF Act of 2023

- **Introduced:** February 15, 2023
- **Sponsors:** Sen. John Cornyn (R-TX), Sen. Sheldon Whitehouse (D-RI), Sen. Chuck Grassley (R-IA), Sen. Marco Rubio (R-FL), Sen. Bill Hagerty (R-TN), Sen. James E. Risch (R-ID), Sen. Deb Fischer (R-NE)
- **Current Status:** Referred to the Committee on Foreign Relations
- **Summary:** Would create a "country of concern" category, consisting of China, Russia, Iran, North Korea, Cuba, and Syria. Agents with a foreign principal that is a country of concern are not exempt under the commercial or LDA exemptions. Would sunset in 2026.

Congressional Legislative Proposals

Increasing FARA Penalties and DOJ Investigative Authority

S. 1364 – Foreign Agents Disclosure and Registration Enhancement Act of 2023

- **Introduced:** April 27, 2023
- **Sponsors:** Sen. Chuck Grassley (R-IA), Sen. Marco Rubio (R-FL), Sen. Todd Young (R-IN), Sen. John Cornyn (R-TX), Sen. Lindsey Graham (R-SC), Sen. Sheldon Whitehouse (D-RI)
- **Current Status:** Referred to the Committee on Foreign Relations, 4/27/2023
- **Summary:** Would provide civil investigative demand authority to the DOJ, increase criminal fines, require new disclosure of foreign agent status to members of Congress, provide new civil penalties. Note that this proposal, unlike a later version also proposed by Sen. Chuck Grassley, does not directly narrow or eliminate FARA exemptions, but rather would require the Attorney General to assess the appropriateness of certain FARA exemptions.

Congressional Legislative Proposals

Retroactive Registration

H.R. 4545/S. 2229 – Retroactive Foreign Agents Registration Act

- **Companion bills in House and Senate** would amend FARA to clarify that there is a duty to register retroactively as foreign agents
- **H.R. 4545**
 - **Introduced:** July 11, 2023
 - **Sponsors:** Rep. Mike Gallagher (R-WI-8), Rep. Raja Krishnamoorthi (D-IL-8), Rep. Chip Roy (R-TX-21), Rep. Jamie Raskin (D-MD-8), Rep. Robert J. Wittman (R-VA-1), Rep. Mikie Sherrill (D-NJ-11), Rep. Jim Banks (R-IN-3), Rep. Abigail Davis Spanberger (D-VA-7), Rep. Dusty Johnson (R-SD-At Large), Rep. Seth Moulton (D-MA-6), Rep. Shontel M. Brown (D-OH-11), Rep. Donald G. Davis (D-NC-1), Rep. John R. Moolenaar (R-MI-2), Rep. Michael Lawler (R-NY-17), Rep. Jeff Jackson (D-NC-14)
 - **Current Status:** Referred to the House Committee on the Judiciary, 7/11/2023
- **S. 2229**
 - **Introduced:** July 11, 2023
 - **Sponsors:** Sen. Chuck Grassley (R-IA), Sen. Gary C. Peters (D-MI), Sen. Marco Rubio (R-FL), Sen. Todd Young (R-IN), Sen. Elizabeth Warren (D-MA)
 - **Current Status:** Referred to the Committee on Foreign Relations, 7/11/2023

Congressional Legislative Proposals

Other FARA-Related Legislation

H.R. 8174 – Congressional and Executive Foreign Lobbying Ban Act

- **Introduced:** April 30, 2024
- **Sponsors:** Rep. Jared F. Golden (D-ME-2), Del. Gregorio Kilili Camacho (D-MP-At Large)
- **Current Status:** Referred to the House Committee on the Judiciary, 4/30/2024
- **Summary:** Would amend FARA to prohibit anyone who has served as a member of Congress, senior political appointee, or U.S. general, from engaging in activities that would require FARA registration

S. 872 – SAFETY on Social Media Act of 2023

- **Introduced:** March 16, 2023
- **Sponsors:** Sen. Tom Cotton (R-AR)
- **Current Status:** Referred to the Committee on Banking, Housing, and Urban Affairs, 3/16/2023
- **Summary:** Would expand FARA's list of foreign principals to include certain social media entities

H.R. 2484 – Honest Elections and Campaign, No Gain Act

- **Introduced:** March 6, 2023
- **Sponsors:** Rep. Kathy Castor (D-FL-14), Rep. Gus M. Bilirakis (R-FL-12), Rep. Jamie Raskin (D-MD-8), Rep. Christopher R. Deluzio (D-PA-17)
- **Current Status:** Referred to the Committee on the Judiciary and the Committee on House Administration, 4/6/2023
- **Summary:** Would require individuals subject to FARA, and who are running for federal office, to certify their PACs' compliance with the Federal Election Campaign Act of 1971

Looking Ahead to 2025

New FARA Guidance from DOJ

Potential Enforcement Targets

- Biden administration connections
- Colleges and universities
- Election interference
- Social media
- Traditional media

Tips/Cautions for Clients

Be aware of possible state registration requirements. No state has yet enacted a FARA-like statute, but many states are considering such legislation, some of which would go further than FARA by eliminating commonly-relied on exemptions.

Watch for new DOJ guidance or rulemaking. The DOJ has been planning to strengthen FARA regulations and limit the use of some exceptions.

Retroactive registration is currently not required by FARA in the D.C. Circuit. But other circuits are not bound by *Wynn*. Also, the D.C. Circuit may rehear *Wynn* en banc. The DOJ is using retroactive registration as a term in deferred prosecution agreements.

Continued Aggressive Use of FARA as an Enforcement Tool? It is unclear how the incoming administration will use FARA.

December 4, 2024

CFIUS ENFORCEMENT

CFIUS BACKGROUND

CFIUS Overview

- **CFIUS** is an inter-agency committee authorized to review foreign direct investment in the United States and **block** transactions or **impose measures to mitigate** any threats to U.S. national security.
- In 2018, the Foreign Investment Risk Review and Modernization Act (“**FIRREA**”) expanded the categories of covered transactions, updated the review process, and made CFIUS review **mandatory** in certain cases.
- CFIUS has traditionally had jurisdiction to review transactions that result in foreign “control” of a U.S. business; CFIUS defines **control** broadly.
- CFIUS review now includes certain foreign **non-controlling** (equity) investments in U.S. businesses that deal with **critical technology, critical infrastructure, or the sensitive personal data** of U.S. citizens (“**TID**” businesses).
- CFIUS also reviews certain real estate transactions.
- When reviewing a transaction, CFIUS considers the vulnerabilities presented by a U.S. business and the unique risks posed by a foreign investor.
- If parties forgo a voluntary CFIUS filing, CFIUS retains the **authority to review and mitigate—and even unwind—a transaction, through closing and beyond.**
- When making a voluntary filing, in addition to determining the transaction structure, the parties will also negotiate the terms of the filing including conditions precedent, the efforts level for mitigation, and other risk-shifting measures, such as regulatory break fees.
- In the current climate, the CFIUS process can take 3-4 months between sign and close.

CFIUS Perspective on U.S. National Security Equities

- Exemplar areas in which CFIUS has traditionally taken an interest include:
 - **Critical U.S. supply chains** that may have national security implications;
 - **Government contractors** including classified work, and the aerospace and defense sector;
 - **Military installations** and access to sensitive areas; proximity to observe their operations;
 - **Telecommunications** and wireless service providers;
 - **U.S. technological leadership** in areas affecting U.S. national security, including semiconductors and other microelectronics, and quantum computing; and
 - **Export-controlled technology** including a variety of products and services.
- Areas that CFIUS has increasingly taken an interest in during recent years include:
 - The **biotechnology and healthcare** industries, which can implicate pharmaceutical development and testing, medical item supply chain, clinic operations, etc.;
 - **Emerging technologies** such as autonomous driving, artificial intelligence, fintech, and others;
 - Risks to **U.S. persons' sensitive data**, which could include video/computer games, advertising, and a myriad of other businesses; and
 - **Cybersecurity risks** that threaten to impair national security.

CFIUS ENFORCEMENT TRENDS

CFIUS: 2024 Year in Review

- CFIUS’s 2023 annual report described a **decrease in CFIUS filings leading into 2024**.
 - Global deal volumes and foreign direct investment decreased for two consecutive years.
 - The latter part of 2024 has seen an increase in M&A activity likely to continue into 2025.
- CFIUS continued focus on **non-notified reviews**.
 - Some reviews were directly related to the 2023 CFIUS guidance on “**springing rights**”.
- CFIUS continued monitoring a **record number of mitigation agreements, leading to a record number of penalties** (which we will discuss in the next section).
- CFIUS’s **policy development office** was especially active, leading and authoring a significant amount of new legislation:
 - In October 2024, the U.S. Department of the Treasury published final rules for the new **outbound investment regime**.
 - Although separate from CFIUS, the policy authors that developed the rules are CFIUS employees.
 - In November 2024, CFIUS published a final rule to substantially expand the scope of covered **real estate transactions** subject to national security review.
 - In May, President Biden had issued a decision requiring Chinese cryptocurrency mining company MineOne to divest an acquisition of Wyoming real estate located close to Air Force missile silos.
 - Also in November 2024, CFIUS published a final rule expanding the information that the Committee can request during non-notified review, expanding its **subpoena authority**, and expanding when it can assess **civil monetary penalties** and the amount of those penalties.
 - Earlier, in August 2024, CFIUS created new Enforcement webpage to post information about penalties.

CFIUS: Historical Enforcement

- In October 2022, CFIUS released its **first-ever guidelines for enforcement actions**, laying out **aggravating and mitigating factors** for penalties, addressing three types of violations:
 - Failure to submit a mandatory notice or declaration;
 - Failure to comply with a mitigation agreement or other order (including divestiture); and
 - Material misstatements or omissions in filings/submissions.
 - ** In 2024, expanded to include material misstatements relating to other topics and requests.*
- **Select examples of aggravating and mitigating factors for penalties include:**
 - The extent to which the conduct impaired or threatened to impair U.S. national security;
 - The extent to which the conduct was the result of negligence versus willfulness;
 - The frequency and duration of the conduct;
 - Whether the company submitted a self-disclosure to CFIUS and the timeliness of the disclosure;
 - Cooperation in the investigation of the matter (e.g., providing timely and detailed responses);
 - The promptness of complete and appropriate remediation of the conduct;
 - The company's history and familiarity with CFIUS and past compliance with CFIUS Mitigation;
 - Internal and external resources dedicated to compliance with applicable legal obligations (e.g., legal counsel, consultants, auditors, and monitors); and
 - Policies, training, and procedures in place to prevent the conduct and the reason for the failure of such measures.

CFIUS: Historical Enforcement

- CFIUS had the authority to assess penalties prior to FIRRTMA, but penalties were rare.
- In 2023, the Committee assessed four civil monetary penalties for breaches of material provisions in mitigation agreements—a then record number of penalties in one year.

	2018	2019	2023	2023	2023
Penalty Amount	\$1M	\$750K	\$100K	\$200K	\$990K
Violation	Breach of mitigation agreement	Breach of interim order	Breach of mitigation agreement	Breach of mitigation agreement	Breach of mitigation agreement
Summary	Failure to establish required security policies and provide adequate reports to CFIUS	Failure to restrict and adequately monitor access to protected data	Failure to timely divest foreign acquirer's interest and repeated violations of other provisions	Failure to timely divest foreign acquirer's interest and repeated violations of other provisions	Multiple failures to maintain website statements regarding foreign ownership as required by CFIUS

CFIUS Focus on Enforcement



“In the last few years, CFIUS has redoubled its resources and focus on enforcement and accountability, and that is by design: if CFIUS requires companies to make certain commitments to protect national security and they fail to do so, [there must be consequences.](#)”

[Assistant Secretary for Paul Rosen](#), 2024 Penalty Update

Update on 2024 Penalties: CFIUS issued record number of penalties, in amounts ranging up to \$60 million dollars

- CFIUS issued its first ever formal determinations of noncompliance (the so-called “DON’T letter”)
- CFIUS raised the penalty cap from \$250K to **\$5M per violation** (or value of the transaction, if greater)

Mitigation Agreement Breach: **\$8.5 million**

- **Non-compliance with CFIUS mitigation measures.**
 - Majority shareholders caused removal of independent directors (ostensibly without CFIUS approval);
 - Absence of directors led to vacancy of CFIUS-mandated Security Director (i.e., CFIUS-approved outside director) position; and
 - Without Security Director, Government Security Committee became defunct, resulting in failure to perform required compliance oversight.

Mitigation Agreement Breach: **\$60 million**

- **Non-compliance with CFIUS mitigation measures.**
 - Failure to take appropriate measures to prevent unauthorized access to sensitive data;
 - Failure to report incidents promptly; and
 - Compliance failures resulted, in CFIUS’s view, in actual harm to U.S. national security equities.
- **Breaching party was named publicly, a rare occurrence.**
 - CFIUS filings and negotiations are confidential.
 - However, CFIUS intends to publish names when
 - there is public disclosure of CFIUS matters, and
 - the Committee assesses public disclosure serves broader enforcement and national security goals.

Material Misstatements: **\$1.25 million**

- **Non-compliance with CFIUS mitigation measures.**
 - Parties made material misstatements in the joint voluntary notice;
 - Submitted supplemental information (e.g., possibly, question set responses) with material misstatements;
 - Submitted Forged documents and signatures to CFIUS; and
 - These documents and submissions impaired CFIUS’s ability to assess transaction risk.

Tips/Cautions for Clients

Mandatory filings are mandatory. CFIUS is well-positioned to assess civil monetary penalties for failures to make a mandatory filing in 2024 and 2025—and the penalty amounts may be substantial.

Carefully consider the rationale for forgoing a voluntary filing. Parties should continue to closely review the national security sensitivities of all transactions—not only those subject to a mandatory filing requirement—because transactions subject to voluntary filings can and do result in attention from CFIUS and serious mitigation measures, including divestment.

Plan for “Day One” mitigation compliance. CFIUS often identifies a threat and proposes mitigation very late in the statutory review period. Transaction parties need a plan to quickly staff up relevant stakeholders in mitigation negotiations to ensure the parties’ ability and readiness to comply is accurately reflected in the executed mitigation agreement.

Develop and maintain a culture of compliance. The great majority of violations result in CFIUS responding other than by imposing a monetary penalty. CFIUS considers penalties to be a last resort. Fostering a culture of compliance around filing decisions, responding to questions from CFIUS and, if applicable, implementing agreements with CFIUS can significantly reduce the likelihood of—and the potential severity of—a monetary penalty.

QUESTIONS?

Upcoming Programs – Fall White Collar Webcast Series

Date and Time	Program	Registration Link
<p style="text-align: center;">Thursday, December 5, 2024</p> <p>11:00 AM – 12:30 PM ET 8:00 AM – 9:30 AM PT 4:00 PM – 5:30 PM BST</p>	<p>The Economic Crime and Corporate Transparency Act Presenters: Patrick Doris, Allan Neil, John Chesley, Christopher Loudon, Amy Cooke, Marija Brackovic</p>	<p style="text-align: center;"><u>Event Details</u></p>
<p style="text-align: center;">Tuesday, December 10, 2024</p> <p>12:00 PM – 1:00 PM ET 9:00 AM – 10:00 AM PT</p>	<p>Anti-Corruption Enforcement and Recent Developments in Latin America Presenters: Michael Farhang, Patrick Stokes, Pedro Soto</p>	<p style="text-align: center;"><u>Event Details</u></p>
<p style="text-align: center;">Thursday, December 12, 2024</p> <p>12:00 PM – 1:00 PM ET 9:00 AM – 10:00 AM PT</p>	<p>Gatekeeper Liability Presenters: David Ware, Michael Scanlon, Nancy Hart</p>	<p style="text-align: center;"><u>Event Details</u></p>

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