

ALERT

DOJ Investigates a Washington Consulting Firm for Potential FARA Violations

June 4, 2021

According to media reports, the U.S. Department of Justice (DOJ) is investigating Blue Star Strategies' work for Ukrainian energy company Burisma Holdings. News of the investigation is consistent with observations that the DOJ has amplified its enforcement of the Foreign Agents Registration Act (FARA) and its scrutiny of individuals and companies representing foreign individuals, governments, and companies in the United States.

FARA is a disclosure statute designed to promote transparency in the U.S. political, media, and public relations arenas, among others, with respect to foreign influence. Generally, FARA requires every "agent of a foreign principal" engaging in certain political or quasi-political activities in the United States to register as such with DOJ, and to periodically – and publicly – disclose certain details of that agency relationship with the foreign principal. Blue Star Strategies is a Washington-based government affairs and public affairs firm. DOJ is allegedly investigating whether by meeting with U.S. government officials on behalf of Burisma, the firm engaged in "political activities" as broadly defined by FARA.

In recent years, following Congressional scrutiny and an audit by the DOJ inspector general, the DOJ has begun to enforce FARA more aggressively. In parallel, the DOJ has worked to promote greater awareness of registration triggers under FARA. In May 2020, the DOJ issued guidance entitled to clarify the agency's understanding of the definition of "agency" under the statute, which is a key threshold in determining whether an individual or entity is acting as an "agent of a foreign principal." In June 2020, the DOJ made FARA "Letters of Determination" publicly available for the first time, which also provide significant insight into how the DOJ FARA Unit analyzes whether an

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Foreign Agents Registration Act (FARA)
International Trade

individual or entity is required to register as a foreign agent.

Given the broad scope of the statute, the potential consequences of noncompliance, and the DOJ's heightened focus on FARA enforcement, it is increasingly important that individuals and companies representing foreign individuals, governments, or companies in the United States in a political or quasi-political capacity carefully evaluate whether their activities may trigger registration under FARA and consult counsel when in doubt.

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Wiley has a well-established FARA practice that has been in existence for well over twenty years, and routinely advises a wide range of clients, including foreign governments, lobbyists, public relations firms, law firms, and tourism agencies. For more information on FARA and our related capabilities, please contact one of the authors listed on this alert.