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Foreign Agents Registration Act (FARA) Handbook



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Introduction

This handbook provides a general overview of the Foreign Agents Registration Act (FARA), the regulatory and statutory provisions that govern whether an entity must register with the U.S. Department of Justice (DOJ), the registration process, the obligations of registered agents, and the penalties that may be imposed for FARA violations.

Overview

Enacted in 1938 and administered by the FARA Registration Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) of the DOJ, FARA is a disclosure statute that seeks to ensure that all persons acting politically or quasi-politically on behalf of foreign entities in the United States properly disclose their activities to the United States government. As a result, the statute requires that all persons acting as an “agent of a foreign principal” register with the DOJ unless an exception applies. In general, all of the information disclosed in FARA registration materials is made publicly available online.

Is there a registration requirement?

Pursuant to the statute, any person who engages in certain political or quasi-political activities on behalf of a foreign principal (i.e., an agent of a foreign

principal) must register under FARA unless an exception applies.

The statute broadly defines a “foreign principal” to include not only foreign governments and foreign political parties, but also persons and organizations outside of the United States, and corporations and other entities that are organized under the laws of a foreign country, or whose principal place of business is in a foreign country.

Further, the statute defines an “agent of a foreign principal” to include any person (i.e., individual, partnership, association, corporation, etc.) who has an agency relationship with the foreign principal, and directly, or through any other person, is engaged in one of four covered activities in the United States.

These activities are:

1. Engaging in political activities for or in the interests of such foreign principal;
2. Acting as a public relations counsel, publicity agent, information-service employee, or political consultant for or in the interests of such foreign principal;
3. Soliciting, collecting, disbursing, or dispensing contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
4. Representing the interests of such foreign principal before any agency or official of the government of the United States.

“Political activities” are defined as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.” Notably, the definition of political activities is broad and could include a wide range of activities, such as lobbying U.S. government officials; engaging in public relations activities for the purpose of changing or enhancing the U.S. public’s perception of a foreign government; or arranging meetings, planning itineraries, or supplying a forum for foreign officials to promote their programs.

Does an exception to registration apply?

Even if an activity triggers a registration requirement under the statute, an exemption may apply. Specifically, the statute provides registration exemptions for the following persons/ reasons:

- Diplomatic or consular officers
- Officials of foreign governments
- Staff members of diplomatic or consular officers
- Private and nonpolitical activities/ solicitation of funds

Religious, scholastic, or scientific pursuits

Defense of foreign government vital to U.S. defense

Persons qualified to practice law

Agents registered under the Lobbying Disclosure Act, provided that the foreign principal is not a foreign government or foreign political party

Importantly, the party claiming an exemption from the registration requirement bears the burden of demonstrating qualification for the exemption under these provisions. When in doubt as to the applicability of a given exception, potential agents of a foreign principal may pursue a request for a formal advisory opinion.

What are the registration requirements under FARA?

An agent of a foreign principal must file an initial registration statement, short forms, and supplemental statements via FARA’s electronic filing system. Pursuant to the statute, the agent must also properly label and file “informational materials” with the DOJ.

Initial Registration

The initial registration statement must be submitted to the DOJ within 10 days of when an agent enters into an agreement with the foreign principal. This initial statement includes a variety of information, such as: the registrant’s

contact information; the status of the registrant; the contract between agent and foreign principal or, if no contract exists, a full statement indicating the circumstances by reason of which the registrant is an agent of a foreign principal; the nature and amount of contribution, income, money, or thing of value that the registrant has received; a detailed statement of the activities that the agent is performing in connection with its representation of the foreign principal; and a detailed statement of the money and other things of value spent by the registrant in connection with his/her representation of the foreign principal. A \$305 filing fee per foreign principal is required.

Supplemental Registration Statements

Every six months, registered agents must file a supplemental registration statement with the DOJ. The supplemental registration statement includes the following information: any changes in agent management, personnel, or termination of representation; a description of any activities or services performed on behalf of the foreign principal during the six-month reporting period; any monies or things of value expended and received in connection with the representation; and information concerning any “informational materials” disseminated. In addition, a \$305 filing fee per foreign principal is required.

Short Forms

Every partner, officer, director, associate, employee, and agent of a registrant is required to file a short

form, unless: (1) the partner, officer, director, associate, employee, or agent of the registrant does not engage directly in registerable activity that is in furtherance of the interests of the foreign principal, or

(2) the employee or agent of a registrant whose activities further the interests of a foreign principal are provided in a clerical, secretarial, or similar capacity. No filing fee is required to file short forms.

Labeling and Filing Requirements of Informational Materials

Two copies of all “informational materials” that are transmitted or caused to be transmitted to two or more persons on behalf of or for the benefit of the foreign principal must be filed with the DOJ within 48 hours of their distribution. “Informational materials” include, but are not limited to, the following: radio and television broadcasts, advertising, magazine or newspaper articles, motion picture films, pamphlets or other publications, letters or telegrams, and lectures or speeches. In addition, all informational materials must contain a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the DOJ.

Recordkeeping Requirements

Registered agents are required to maintain all records related to the activities subject to registration under the statute for up to three (3) years after the termination of an agent’s

registration. The recordkeeping requirement covers: financial statements; correspondence between relevant persons; memorandums; written communication; informational materials; bank statements; records containing the names, titles, and contact information of individuals that either provided services to the foreign principal, or were contacted by the agent in relation to the foreign principal's agenda; and any other documents prepared for, distributed to promote, or containing information regarding the agent's representation of the foreign principal. If the registered agent is a corporation or other such entity, then it is also required to retain meeting minutes.

Upon request, these records must be made available for inspection by the NSD and the Federal Bureau of Investigation (FBI).

Electronic Filing Requirement

The DOJ requires that all registration statements and informational materials be submitted electronically using the agency's eFile system. In order to file documents electronically using eFile, new registrants must submit their registration package by selecting "New Registration" on the eFile website and then uploading their documents to the system. The DOJ will then review the submission and provide an account number and password via mail.

Registrants must use their online user account number and password to upload any subsequent documents.

The registration fee associated with the various FARA filings can be paid

either online with a credit card or electronic funds transfer, or by mail with a check. Once a document has been successfully submitted, the eFile system will provide a confirmation with a transaction number to track the submission.

New eFile System for Initial Registrants

The DOJ implemented a new online FARA eFile system in September 2019 for new FARA registrants. This new system is a web-based format, which requires the online entry of information for most responses as opposed to PDF uploads of FARA registration forms (uploads are still permitted for certain supporting documentation such as contracts between a registrant and foreign principal). This new system allows for more standardized responses to questions and allows for inputted information to be searchable on DOJ's online FARA database. While the information requested in the new system largely tracks the information requested in the old FARA registration forms (the initial registration statement, Exhibit A, Exhibit B, Exhibit C, and short form), there are slight variations in certain questions, among other differences.

Notably, while the old eFile system remains the same for existing FARA registrants, the DOJ is expected to transition all filings to the new system later this year.

What are the penalties for noncompliance?

The DOJ may impose criminal penalties on agents that intentionally and willfully

violate any provisions under the statute, including fines up to \$10,000, imprisonment for no more than five (5) years, or both. Agents that willfully make false statements or intentionally fail to provide material information in support of their registration or supplemental statements are also subject to these sanctions. In the majority of cases, however, the DOJ has found noncompliance with registration requirements to be unintentional, permitting agents to remedy any deficiencies instead of instituting criminal proceedings.

Recent Developments in FARA Enforcement

In recent months, the DOJ has begun to enforce FARA more aggressively. Indeed, FARA has now been thrust into the national spotlight. Given the broad scope of the statute, the potential consequences of noncompliance, and the DOJ's heightened focus on FARA enforcement, it is 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. Recent developments in FARA enforcement are outlined below.

The 2016 Inspector General Report

The DOJ Inspector General (IG) issued a report in September 2016, faulting the National Security Division (NSD)

for its failure to enforce FARA. The report found that 63% of new lobbyist registrations weren't timely filed and half of registered agents failed to timely update the division as required by the statute. The report also revealed a distinct disagreement among FBI counterintelligence agents, Assistant United States Attorneys (AUSAs), and NSD officials regarding what the intent of FARA is, as well as what "constitutes a 'FARA case.'" The IG reported that investigators had a "clear preference" toward bringing unregistered agents into compliance with FARA, rather than prosecuting them, leaving an "important counterintelligence tool underutilized."

The report provided 14 recommendations to improve the NSD's enforcement and administration of FARA, which included making FARA advisory opinions public, establishing a "comprehensive system" to track FARA cases, and expanding the NSD's information sources to better identify agents who are not in compliance. Since the 2016 report, the DOJ has become more aggressive in ensuring that foreign agents register their activities.

The Manafort Investigation

In October 2017, following an investigation by Special Counsel Robert Mueller, Paul Manafort, President Donald Trump's former campaign chairman, was indicted on multiple counts, including charges that he violated FARA by failing to timely register with the NSD regarding his consulting work performed on behalf of

a pro-Russia political party in Ukraine between 2012 and 2014. Manafort retroactively filed as a foreign agent after press reports emerged revealing his work for the political party. Richard Gates, Manafort's business partner and former deputy campaign chairman to President Trump, was also charged with violating FARA. Gates pled guilty to the charges and is currently assisting with the investigation.

Since the investigation into Manafort's activities began, FARA filings at the NSD have soared. The number of active FARA registrants has increased by roughly 25% since 2016, jumping from 365 registrants in 2016 to 444 registrants as of May 28, 2019. Moreover, as of May 28, 2019, there were approximately 673 active foreign principals registered under the statute.

Media Registrations

There have been several recent press registrations under the statute. Russian network RT was identified in January 2017 as having an impact on the 2016 U.S. presidential election. After months of pressure from the DOJ to register, T&R Productions LLC, the production company responsible for all English language content on RT, registered with FARA on November 10, 2017. In February 2019, Chinese state-run media company CGTN America (CGTN) registered as a U.S.-based agent of the Chinese government. These recent registrations underscore the DOJ's continued heightened focus on FARA enforcement, specifically, ensuring that all entities that trigger

a registration requirement and are not eligible for an exemption – whether lobbyists, public relations companies, or even media outlets – are registered under the statute.

DOJ Public Advisory Opinions

In June 2018, the DOJ released over 50 redacted FARA advisory opinions addressing common exemptions. The release of the opinions to the public was likely in response to the 2016 IG report's recommendation. A few important exceptions are outlined below, but for a full list of the advisory opinions, visit the [DOJ website](#).

Definition of Agency: In response to a recent advisory opinion request, the DOJ concluded that a commentator hosting a television show that was produced by a U.S. production company registered under FARA (because it was producing programming for a foreign state-owned network) was not required to separately register under FARA given the lack of an independent contractual relationship between the commentator and the foreign state-owned network. As the DOJ explained, “[The commentator]’s contractual relationship is with [the U.S. production company], a FARA-registered U.S. entity. Therefore, it cannot be said that the [commentator] is an ‘agent of a foreign principal’ who is acting ‘at the order, request, or under the direction or control of a foreign principal.’”

Commerce Exemption: A U.S. company providing compliance and consulting services to a foreign state bank submitted an advisory opinion

request seeking confirmation that FARA's commerce exemption at 22 U.S.C. § 613(d) applied. The company characterized its services for the bank as private and non-political, claiming that its services do not serve a foreign interest. The DOJ disagreed, however. Specifically, the DOJ concluded that the U.S. company did not qualify for the commerce exemption because the company's activities were intended to demonstrate the bank's fitness to establish relationships with U.S. financial institutions, thereby directly promoting the public interests of the foreign country and disqualifying the agent from the commerce exemption.

Legal Exemption: A U.S. law firm submitted an advisory opinion request claiming that the legal exemption at 22 U.S.C § 613(g) applied to its representation of a foreign person and foreign bank. The DOJ agreed, noting that the law firm's activities were limited to the provision of legal services to the foreign person and foreign bank in the context of a U.S. sanctions-related investigation and enforcement proceeding and were not intended to influence U.S. sanction policies beyond the law firm's representation of the foreign person and foreign bank, which would have disqualified the firm from the exemption.

LDA Exemption: A U.S. law firm representing a foreign bank submitted an advisory opinion request claiming the LDA Exemption under 22 U.S.C. § 613(h) applied. As part of its representation of the foreign bank, the law firm intended to lobby Congress, special interest groups, and the public.

DOJ concluded that the law firm could not avail itself of the LDA exemption because the foreign bank was part of the government, making the foreign government the principal beneficiary of the law firm's efforts. As DOJ noted, the LDA exemption does not apply where, as here, a foreign government is the principal beneficiary of an agent's activities. See 18 C.F.R. § 5.307.

Since June 2018, the DOJ has released thirteen additional advisory opinions on its website. These opinions continue to help clarify DOJ's exemptions to FARA registration and help highlight current FARA enforcement efforts. For example, an opinion released in August 2019 clarifies that foreign foundations are foreign principals for which FARA registration may be required.

While DOJ advisory opinions shed some light on its application and interpretation of the FARA statute, they also reinforce the heavily fact-specific nature of FARA registration obligation determinations.

Given that this considerable gray area exists, individuals and companies representing foreign individuals, governments, or companies in the U.S. in a political or quasi-political capacity should seek counsel for specific advice on FARA registration obligations and exemptions.

Additional Indictments Under FARA

In addition to the Manafort indictment, the NSD has begun to enforce FARA more aggressively than it has in decades, resulting in a significant increase in criminal indictments.

In May 2018, Nisar Ahmed Chaudhry, a U.S. permanent resident and Pakistani national, pled guilty to charges that he failed to register as a foreign agent in connection with lobbying work he did from 2012 through 2018 for the Pakistani government in an effort to shape U.S. foreign policy. On August 31, 2018, Samuel Patten, a former associate of Paul Manafort and prominent Washington, DC lobbyist, pleaded guilty for failing to register as a foreign agent under FARA and other counts, including causing and concealing foreign payments. On September 25, 2018, U.S. army reservist Ji Chaoqun was charged with violating FARA for secretly providing information about American defense contractor employees to a Chinese intelligence officer without registering under FARA.

More recently, in February 2019, Gregory Craig, former Skadden Partner and former White House Counsel to President Obama, was charged with making false statements

to the DOJ in connection with his work for Ukraine. Skadden settled the DOJ's claims in January 2019. The terms include retroactively registering as a foreign agent, reviewing Skadden's policies for responding to government inquiry, and paying the U.S. Treasury Department over \$4.6 million made from its Ukraine work. In September 2019, Gregory Craig was acquitted of the felony charges.

On July 23, 2019, a federal jury convicted Bijan Rafiekian, an Iranian-American businessman and Michael Flynn's partner in pro-Turkey lobbying, on charges of conspiring to act as an agent of a foreign government, conspiring to make false statements and wilful omissions in a FARA filing, and acting in the U.S. as an unregistered agent of a foreign government. On September 24, 2019, a judge in the U.S. District Court for the Eastern District of Virginia overturned the conviction. ▼

Wiley Experience with FARA

Wiley's FARA practice is an established practice that has been in existence for well over twenty years. Our attorneys routinely counsel clients on whether registration is required under FARA and, if so, the requirements for registration. We also regularly draft advisory opinion requests on behalf of clients to the National Security Division of the DOJ, which is tasked with administering and enforcing the statute. Wiley has drafted dozens of advisory opinion requests in recent years, most of which have resulted in a positive result for its clients.

Wiley attorneys actively assist clients with completing and executing their FARA filings and ensuring full

compliance with the law. We also provide FARA trainings to foreign agents and potential foreign agents on an individual and company-wide basis. Additionally, our attorneys have assisted clients with preparing for and participating in DOJ FARA audits as well as responding to DOJ FARA-related subpoenas.

Our attorneys have handled FARA matters for a variety of clients, including 501(c) entities, public relations firms, law firms, media companies, government affairs practices, public policy consulting firms, tourism agencies, and foreign governments/foreign political parties.

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