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**The 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 Exemption 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 the 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 in the near future.

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 years, the DOJ has begun to enforce FARA more aggressively, such that 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.

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. In

August 2019, the DOJ directed the Turkish Radio & Television Corporation to register its U.S. affiliate. Additionally, according to press reports, the DOJ ordered Qatari news outlet Al Jazeera to register U.S. operations of its affiliate AJ+ as a foreign agent in September 2020. While the DOJ has not confirmed these reports, AJ Jazeera publicly condemned the move. The move follows a years-long campaign from Congress urging the moves. 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.

Heightened Focus on China and U.S. Tech Activities

The Trump Administration has signaled that certain activities by U.S. tech companies could trigger a FARA registration requirement. In July 2020, Attorney General William Barr gave a speech urging U.S. business leaders to remain alert about how the Chinese Communist Party (CCP) may use them to promote policies or politicians to advance the CCP's interests, which could implicate FARA. Barr's statements underscore that the statute is not limited to lobbying; it also includes public relations, image-making, and other less formal activities. It also covers activity for not only foreign governments and foreign political parties, but also private foreign corporations and private foreign persons. Nor must a foreign agent be paid or even have a contract to trigger a FARA registration requirement. Secretary of State Michael Pompeo also called on think tanks and foreign policy organizations to disclose their ties. While Pompeo noted that such disclosure would not be required for the State Department to engage with such entities, Department staff will "be mindful of whether disclosure has been made and of specific funding sources that are disclosed when determining whether and how to engage." The policy is distinct from FARA, but in the same vein.

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. The DOJ concluded that the law firm could not avail itself of the LDA exemption because the foreign bank was part of the foreign 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 52 additional advisory opinions on its website. These opinions continue to help clarify the 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 the DOJ's 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.

New DOJ Guidance on 'Agency'

The DOJ published new Guidance entitled *The Scope of Agency Under FARA* in July 2020. The new Guidance recognizes that: “[B]ecause FARA regulates expressive activities by U.S. persons that implicate the rights protected under the First Amendment, it is important that the standards governing its application be clear.” As a result, the Guidance presents the DOJ’s “understanding of a key threshold determination in assessing when the requirements of the Act apply – i.e., the definition of ‘agent of a foreign principal.’” The Guidance next makes clear that “whether a person is an agent for purposes of FARA depends on whether the relationship between the foreign principal and the person is such that the latter’s enumerated activities within the United States may be fairly attributed to a foreign principal.” The DOJ’s “ultimate test for agency under FARA is whether it is ‘fair to draw the conclusion that an individual is not acting independently, is not simply stating his or her own views, but is acting as an agent or alter ego of the foreign principal.’” Accordingly, the government looks for evidence of “some level of power by the principal over the agent or some sense of obligation on the part of the agent to achieve the principal’s request.” As part of this analysis, the DOJ considers the following factors:

- Whether those requested to act were identified with specificity by the principal;
- The specificity of the action requested;
- Whether the request is compensated or coerced;
- Whether the political activities align with the person’s own interests;

- Whether the position advocated aligns with the person’s subjective viewpoint; and
- The nature of the relationship between the person and the foreign principal.

Additional Indictments Under FARA

Since the indictment of Paul Manafort in October 2017, the NSD has begun to enforce FARA more aggressively than it has in decades, resulting in a significant increase in criminal indictments. The DOJ has also expanded FARA’s reach, using it to target covert state action.

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.

In October 2020, Trump fundraiser Elliott Broidy pleaded guilty to conspiracy to violate FARA for his role in a “back-channel lobbying campaign” for the U.S. government to drop an investigation into a matter involving the embezzlement of billions from 1Malaysia Development Berhad (1MDB), a strategic investment and development company wholly owned by the Government of Malaysia, and to remove and return a Chinese citizen to the People’s Republic of China. Nickie

Lum Davis (a U.S. businesswoman) and a former DOJ employee also pleaded guilty for their roles in the conspiracy.

The Trump Administration has also used FARA to target internet domains used by Iran's Islamic Revolutionary Guard Corps (IRGC). In October and November 2020, the FBI seized eight domain names because the sites violated FARA's registration and disclosure requirements. The seized websites purported to be independent news outlets when in reality, they were operated by or on behalf of the IRGC to target the United States with pro-Iranian propaganda without notifying the American public that the content of the websites was published on behalf of the IRGC and the Iranian government.

In addition, and as mentioned above, the DOJ has used FARA to target Chinese espionage efforts in the United States. For instance, in October 2020, eight Chinese officials involved in a "multi-year campaign of harassment and stalking" directed at U.S. residents to force their return to China as part of "Operation Fox Hunt" were charged with conspiring to act in the United States as illegal agents of China. The DOJ also charged a New York City Police Department official with acting as an illegal Chinese agent in September 2020. Additionally, the DOJ charged a Singaporean doctoral student with acting as an illegal Chinese agent for attempting to cultivate relationships with Americans with high-level security clearances so that China could seek to

gain access to non-public and classified information.

Wiley Experience with FARA

Wiley's FARA practice is an established practice that has been in existence for well over 20 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 NSD 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 our 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.

Contact Us



Daniel B. Pickard
202.719.7285
DPickard@wiley.law



Tessa Capeloto
202.719.7586
TCapeloto@wiley.law

