

The background of the cover is a photograph of the United States Capitol building, showing its iconic dome and classical columns. A large, dark purple triangle is superimposed over the center of the image, serving as a backdrop for the title text. The sky is blue with some light clouds.

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Foreign Agents Registration Act (FARA) Handbook

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Wiley's handbook on the Foreign Agents Registration Act (FARA) provides a general overview of 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, 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. FARA is administered by the FARA Registration Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) of the DOJ.

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 or solicitation of funds;
- Religious, scholastic, or scientific pursuits;
- Defense of foreign government vital to U.S. defense;
- Persons qualified to practice law; and
- 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 and before engaging in the FARA registerable activity. 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 provides those activities 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 who 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 upload their documents and enter their information into 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.

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, including negative public relations implications, 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. A string of recent enforcement actions by the DOJ suggests that the trend toward increased FARA enforcement will continue. Recent developments in FARA enforcement are outlined below.

DOJ Rulemaking

In January 2025, the DOJ National Security Division issued its long-awaited proposed rule amending its FARA regulations, providing interested parties with an opportunity to comment. Notably, DOJ's FARA implementing regulations have not been amended since 2007. The most significant changes proposed are arguably to the Commercial Exemption to FARA registration, including the following:

With respect to Section (d)(1) of the Commercial Exemption, exempting from FARA registration "private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal," the proposed changes:

- Clarify that the exemption does not apply when the agent engages in political activities or where the activities promote – rather than "directly promote," per the current language – the political or public interests of a foreign government/political party.
- Would allow a person or employee of such person who engages or agrees to engage only in promoting bona fide recreational or business travel to a foreign country to come within this exemption where the agent's relationship to a foreign principal is

apparent to the public.

In terms of Section (d)(2) of the Commercial Exemption, exempting from FARA registration "other activities not serving predominantly a foreign interest," the proposed changes are more substantial and are as follows:

- Make explicit that, consistent with the plain meaning of the statutory language, the exemption applies to non-commercial and commercial interests.
- Provide that an agent would be considered to serve a predominantly foreign interest and categorically precluded from qualifying for the exemption if: "(1) the intent or purpose of the activities is to benefit the political or public interests of the foreign government or political party; (2) a foreign government or political party influences the activities; (3) the principal beneficiary is a foreign government or political party; or (4) activities on behalf of a state-owned enterprise (or an entity that is directed or supervised by a foreign government or political party) promote the political or public interests of that foreign government or political party."
- To the extent that none of the four above exclusions apply, DOJ is proposing to replace its current test of determining what is "not predominantly serving a foreign interest," which applies only when state-owned enterprises are involved. Instead, DOJ is proposing to adopt a totality-of-the-circumstances test to determine whether the activities in question predominantly serve a foreign or domestic interest. To guide this analysis, DOJ is proposing a set of "non-exhaustive common factors that it may consider in future cases." These factors are: "(i) whether the public and relevant government officials already know about the relationship between the agent and the foreign principal; (ii) whether the commercial activities further the interests of the domestic commercial entity more or less

than the foreign commercial entity; (iii) the degree of influence (including through financing) that foreign sources have over domestic non-commercial entities such as nonprofits; (iv) whether the activities concern laws and policies applicable to domestic or foreign interests; and (v) the extent to which any foreign principal influences the activities.”

DOJ also proposed a change to the legal exemption that would allow lawyers to provide information about a legal “proceeding, inquiry, or investigation” during its pendency to the press. With respect to advisory opinions, DOJ proposed requirements that would make opinions more detailed, clarify who should sign an inquiry, and require inquiries to be submitted through the FARA website. Technological changes, including changes to the fee payment process and communication requirements, were also proposed.

Notably, DOJ declined in its rulemaking to codify its December 2021 guidance on agency clarifying that a “request” may not be enough to establish agency under FARA, or clarify the meaning of “political consultant.” A July 2021 advisory opinion reached the conclusion that only political consultants engaged in “political activity” would be required to register under FARA.

Nexus with Section 951

18 U.S.C § 951 (Section 951), like FARA, targets activities undertaken by foreign agents in the United States. It provides criminal penalties for certain agents of foreign governments who act in the United States without first notifying the Attorney General. Section 951 cases generally involve espionage-like or clandestine behavior, information gathering, or procurement of technology on behalf of foreign governments or officials. Section 951 is centered on criminal enforcement of violations and has no formal administrative registration system. In contrast, FARA is a disclosure statute with a primary

purpose of transparency, not criminal prosecution. Moreover, the definition of foreign principal under Section 951 is limited to foreign governments and officials; FARA defines foreign principals more broadly, also including foreign companies and foreign individuals. DOJ has recently brought charges under Section 951 either in conjunction with or in lieu of charges for FARA violations. Registration under FARA serves as the requisite notice under Section 951.

DOJ Public Advisory Opinions

The DOJ publicly posts advisory opinions that provide guidance on DOJ’s interpretation of the law. These advisory opinions, although heavily redacted and binding only on the submitting party based on the facts presented, provide insights into DOJ’s thinking on FARA registration triggers and exemptions. Since the initial release of advisory opinions in June 2018, likely in response to a 2016 IG report’s recommendation, DOJ has released nearly 200 FARA advisory opinions. Recent advisory opinions provide guidance and insight on the FARA Unit’s current thinking on the scope of agency as well as the FARA exemptions, including the Commercial exemption, Lobbying Disclosure Act exemption, and legal exemption.

For instance, in a December 2023 opinion, DOJ surprisingly concluded that FARA registration was required where a U.S. nonprofit organization had an agency relationship with a foreign entity. Although the nonprofit was engaged in FARA activity, the activity was being conducted under its own direction, control, and financing, and not under the direction, control, or financing of the foreign entity. In concluding that registration was required under these facts, DOJ noted that “[E]ven if [the nonprofit] were to “retain all control over decision-making as to” the FARA activity in question, “under the plain language of the statute, once an agency relationship is established, there is no requirement that the registrable conduct be specifically directed by the foreign principal.”

In a June 24, 2024 opinion (and subsequent September 2024 letter), which involved foreign

litigation funding, the DOJ found that the legal exemption did not apply to the activities in question because they involved, in part, political activity. More notably, in concluding that FARA registration was required, DOJ also found that the Commercial Exemption did not apply under the facts presented. In addressing the “not predominantly serving a foreign interest” exemption to FARA registration (22 U.S.C. 613(d)(2)), and finding Section (d)(2) inapplicable, DOJ explained that the [U.S. Law Firm’s] activities “predominantly serve a foreign interest” and then proceeded to identify these activities supporting its conclusion. This opinion reinforces the DOJ’s current thinking on Section (d)(2), which is reflected in its current proposed regulatory amendments – to view Section (d)(2) more as a “domestic interest” exemption.

A full list of the DOJ’s advisory opinions is available at the [DOJ website](#).

DOJ Guidance on ‘Agency’

The DOJ’s Guidance on *The Scope of Agency Under FARA* 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.

Recent Criminal and Civil Enforcement Actions Under FARA

Since the indictment of Paul Manafort in October 2017, the NSD has enforced FARA more aggressively than it has in decades, resulting in a significant increase in criminal enforcement actions. These include, for example:

- In January 2024, the DOJ announced that Barry Bennett and Douglas Watts, two longtime political consultants with deep Washington ties, each entered into a Deferred Prosecution Agreement (DPA) with DOJ in response to allegations that they failed to comply with FARA for lobbying performed on behalf of a foreign government. According to DOJ, Bennett’s firm received approximately \$773,000 from Country A in 2017 for lobbying efforts conducted on behalf of Company A. Actions taken by Company A, as directed and carried out by Bennett and Watts, included over 3,000 phone calls to Members of the House “encouraging them to discontinue U.S. involvement in a coalition of Country A’s rivals,” publishing opinion articles, mailing American citizens, and lobbying both

Congress and then-President Trump. Bennett's firm failed to disclose the creation and operation of Company A in its existing FARA filings, and neither Watts nor Company A were registered under the Act. Under the terms of their DPAs, Bennett has agreed to amend his FARA filings and pay a \$100,000 fine; Watts must pay a \$25,000 fine.

- A second indictment against a sitting member of Congress was made public in May 2024. Rep. Henry Cuellar (D-TX) and his wife face federal charges including bribery, money laundering, and violations of FARA. Rep. Cuellar and his wife allegedly accepted over \$600,000 in bribes from 2014 through 2021 from an oil company wholly owned by the Government of Azerbaijan, and from a bank headquartered in Mexico City. According to the indictment, "in exchange for the bribe payments to [Ms. Cuellar], [Rep. Cuellar] agreed to perform official acts in his capacity as a Member of Congress, to commit acts in violation of his official duties, and to act as an agent of the Government of Azerbaijan and Foreign Bank." In their appearance in court in May 2024, the Cuellars pled not guilty.
- In September 2024, Linda Sun, a former high-ranking official in New York State's government, was arrested in Brooklyn and charged with violating FARA for allegedly acting as an undisclosed agent of the People's Republic of China and the Communist Party of China by leveraging her position to advance their interests within the United States. According to the indictment, Sun used her position to promote CCP and PRC initiatives by acting at the request of PRC government officials and engaged in "numerous political activities," such as arranging meetings between PRC officials and New York State government officials, obtaining state

proclamations for PRC officials without proper authorization, and violating numerous state protocols to provide benefits to PRC and CCP officials. In return for her actions, Sun and her husband received substantial benefits such as tickets to events, travel accommodations, and employment opportunities for Sun's family within the PRC. The indictment also includes allegations of money laundering and bank fraud.

- Sue Mi Terry, a former CIA analyst, member of the U.S. National Security Council, and White House employee, was arrested and indicted together with her husband, Tony Terry, in New York in July 2024 for acting as an unregistered foreign agent of South Korea (ROK). According to the indictment, the couple spent over a decade advocating ROK policy positions, directing ROK government officials, and sharing non-public U.S. government information with ROK officials. In return, they received luxury goods, dinners, and more than \$37,000 in funding for policy programs she managed at the think tanks where she was employed. Since leaving government service, Sue Mi Terry testified before Congress regarding U.S. policy toward Korea, worked at various U.S.-based think tanks and academic institutions, made media appearances, and hosted conferences related to ROK and U.S. policy. The indictment further alleges that, since leaving government service, Terry served as a "valuable source" for the ROK National Intelligence Service (ROK NIS). Sue Mi Terry has never registered under FARA, despite having been informed of potential FARA registration obligations during her congressional testimonies and having received FARA training through her think tank employment. The cases are pending before the Eastern District of New York.
- In May 2022, the DOJ sued Stephen A. Wynn in the U.S. District Court for the District of

Columbia to register under FARA for his alleged activities on behalf of the PRC. According to the original complaint, in 2017 Wynn contacted then-President Trump and members of the Trump Administration to convey a request by the PRC to cancel a visa request for a Chinese national who was charged with corruption by the PRC and sought asylum in the United States. In October 2022, U.S. District Judge James E. Boasberg dismissed the action for failure to state a claim, noting that he was bound by D.C. Circuit precedent (*U.S. v. McGoff*), which interpreted an ambiguous FARA provision to mean that the continuing criminal offense of a FARA violation ends on the date that lobbying activities cease. A three-judge panel of the D.C. Circuit subsequently upheld the dismissal, agreeing that Wynn no longer had an ongoing obligation to register under FARA for his alleged lobbying/political activities on behalf of the PRC. Although DOJ filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit for a rehearing en banc in October 2024, the petition was denied in December.

These recent indictments demonstrate that knowing and willful violations of FARA can result in substantial criminal and civil penalties.

Notably, in early February 2025, Attorney General Bondi issued a DOJ-wide charging memo, restricting FARA criminal charges for more traditional espionage activities on behalf of foreign governments. The memo also states that the FARA Registration Unit should focus its efforts on civil enforcement, issuing guidance, and regulatory initiatives. While this directive lessens the risk of criminal prosecutions for willful violations for non-espionage type of activity (e.g., public relations, economic investment promotion etc.), DOJ's civil enforcement of FARA via letters of inquiry, performing audits, etc., is expected to continue.

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 outcome 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.

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