



PUBLIC AFFAIRS COUNCIL

Foreign Agents Registration Act 101 and What's Next

Tessa Capeloto
Partner, International Trade

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Overview

- FARA Background
- Registration Triggers
- Registration Exemptions
- FARA filings
- Recent Developments
- Era of Heightened Enforcement



Foreign Agents Registration Act (FARA)

FARA was enacted by Congress in 1938 in response to the actions of German propaganda agents in the United States in the period leading up to World War II.

Foreign agent registration is designed to ensure that the U.S. government and U.S. public are aware of foreign efforts to influence domestic public opinion, policies, and laws.



FARA Generally

- FARA requires every person acting as an “agent” of a “foreign principal” to register with the Department of Justice’s (DOJ) National Security Division and file forms disclosing their agreement with, income from, and expenditures on behalf of the foreign principal unless an exemption to registration applies.
- FARA is a transparency statute; it does not limit activities.
- Registration statements are public documents that are published online by DOJ and reported to Congress semi-annually.
- FARA filings are all available publicly on DOJ’s website:
<https://efile.fara.gov/ords/fara/f?p=1381:1:3368349042739>



Who is a “Foreign Principal”?

- Government or political party of a foreign country;
- Persons and organizations outside of the United States; or
- Corporations and other entities organized under the laws of a foreign country, or whose principal place of business is a foreign country.



Who is an “Agent of a Foreign Principal”?

- An agent includes “any person 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 or of a person **any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal**”



FARA Covered Activities

Entities funded or subsidized, in whole or in part, by foreign principals.

Entities engaged in “political activities,” such as public relations and image-making on behalf of foreign principals, rather than promoting purely commercial interests.

Entities that disburse money on behalf of foreign principals.

Entities that represent foreign principals before U.S. government agencies and officials.



What are “Political Activities”?

- Broadly defined to cover any activity believed or intended to:
 - In any way influence:
 - Any agency or official of the U.S. government; 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
 - Political or public interests, policies, or relations of a government of a foreign country or a foreign political party.



Typical “Political Activities”

- Engaging in public relations activities for the purpose of changing or enhancing the U.S. public’s perception of a foreign government or leader (*i.e.*, image making);
- Arranging meetings, planning itineraries, or supplying a forum for foreign officials to promote their programs;
- Participating in or arranging lectures, speeches, press conferences, or interviews with the media in relation to the political or public interests being promoted; and
- Preparing or disseminating press releases, newsletters, or other types of informational materials related to the political activities of and on behalf of the foreign principal.



FARA Registration Triggers Are Broad

- The registration requirement can be triggered by:
 - Single meetings with U.S. government officials;
 - Arranging or hosting a single meeting or conference;
 - Writing a report, article, or opinion piece.



Registration Exemptions

- FARA provides the following exemptions to registration:
 - Diplomatic Exemption;
 - **Nonpolitical or Private Activity Exemption;**
 - Public Interest Exemption;
 - **Lobbying Disclosure Act Exemption;**
 - Legal Representation Exemption; and
 - National Security Exemption



Nonpolitical or Private Activity Exemption

Actions taken solely to further the bona fide trade or commerce of a foreign principal; or

Other activities that do not predominantly serve a foreign interest.

Lobbying Disclosure Act (LDA) Exemption

- Lobbyists working on behalf of foreign citizens or foreign organizations may register and report under the Lobbying Disclosure Act instead of FARA.
 - Even if these lobbyists do not meet thresholds for LDA registration, they may register under LDA in order to be exempt from FARA registration and reporting.
 - Because FARA reporting is more detailed and complex, lobbyists working for foreign citizens or organizations may want to consider registering under LDA instead of FARA.
- However, agents of **foreign governments** and **foreign political parties** are required to register and report under FARA.



FARA Registration Statements

Registration is required within 10 days of engaging in covered activity, a contract, or a meeting of the minds on all substantive terms.



There are four types of FARA registration statements:

Initial Registration
Statement (required)

Supplemental
Registration Statement
(required)

Short Form Registration
Statement (required)

Amendment to
Registration (may be
required)



Initial Registration Statement

- All eligible agents must register with the DOJ and:
 - Report information regarding services;
 - Describe or include a copy of the contract or agreement;
 - Disclose compensation gained from providing such services; and
 - Report any expenses incurred in relation to the representation of the foreign principal.



Initial Registration Statement (cont'd)

- The initial registration statement must be submitted to the FARA Registration Unit within 10 days of an agent entering into an agreement with the foreign principal.
 - An “agreement” has been broadly defined to include a formal, written contract, an oral contract, informal correspondence, etc.
- A \$305 filing fee per foreign principal is required.



Supplemental Registration Statement

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



Short Form Registration Statement

- Each partner, officer, director, associate, employee, and agent of a registrant is required to file a short form unless:
 - The individual engages in no activities in furtherance of the foreign principal's interests; or
 - The services rendered to the registrant are in a secretarial, clerical, or similar capacity.
- Short forms should be filed as new partners, officers, etc., are hired.
- No filing fee is required.



Informational Materials: Filing and Labeling Requirement

- Definition of Informational Materials:
 - “Any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise.”



Informational Materials: Filing and Labeling Requirement (cont'd)

- Copies of all “informational materials” that are, or are reasonably adapted to being, circulated among two or more persons must be filed with FARA within 48 hours of their distribution.
- All informational materials must be conspicuously labeled with the following statement: “This material is distributed by (name of registrant) on behalf of (name of foreign principal). Additional information is available at the Department of Justice, Washington, D.C.” (DOJ-recommended format)
 - Non-printed materials must include a label providing the same information.
 - If presented to U.S. government officials or agencies, the informational materials must also be prefaced or accompanied by a “true and accurate statement” asserting that the person disseminating the material is registered pursuant to FARA.



Recordkeeping

- Maintain all FARA-related records for up to three years after the termination of an agent's registration.
- Upon request, the following must be made available for inspection by the National Security Division (NSD) of DOJ and the Federal Bureau of Investigation (FBI):
 - Correspondence, memorandum, written communication;
 - Financial statements, bank statements;
 - Informational materials;
 - 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 regarding the agent's representation of the foreign principal.



Regulatory Developments

- In late 2021, the Department of Justice issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on whether/how to modernize FARA through amendments to the DOJ's implementing regulations.
- Comments submitted in February 2022 strongly encouraged DOJ to amend rules to clarify, among other things:
 - What constitutes agency under FARA; and
 - How precisely the exceptions to FARA regulation apply.
- DOJ is expected to issue a Notice of Proposed Rulemaking (NPRM) later this year that will likely include draft amended regulations and solicit additional public comment before finalizing.



Legislative Developments

- Several legislative proposals in recent months would increase reporting requirements and address perceived FARA exception “loopholes.”
 - The PAID OFF Act, recently reintroduced in the 118th Congress, would amend FARA to remove the LDA exemption and another exemption for agents representing *bona fide* trade or commercial interests.
 - The Foreign Agents Disclosure and Registration Enhancement Act, recently reintroduced in the 118th Congress, would amend FARA by reinforcing the tools available to the DOJ when investigating potential FARA violations and by increasing the penalties for noncompliance. The bill would also extend oversight abilities to GAO and require the office to examine misuse of the LDA exemption.



Legislative Developments (cont.)

- The Disclosing Foreign Influence in Lobbying Act, reintroduced in the 118th Congress, would attempt to close the LDA exemption “loophole” by amending the LDA to require disclosure of foreign governments and/or foreign political parties participating in the direction, planning, supervision, or control of lobbying activities.



DOJ Enforcement



Uptick in DOJ letters of inquiry.



DOJ requiring that LDA registrants register under FARA.

Conclusion

FARA is much broader than an “international lobbying law.”

Key terms are defined broadly.

In a period of heightened enforcement and Congressional interest.

FARA issues can potentially involve significant reputational risk.

When in doubt, obtain legal guidance.





Contact



Tessa Capeloto

TCapeloto@wiley.law

202.719.7586

