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Foreign Agents Registration Act (FARA): A Legal Overview

In 1938, Congress enacted the Foreign Agents Registration Act (FARA) to reduce the influence of foreign propaganda circulating in the United States. Anticipating that greater transparency could help achieve these ends, Congress imposed new registration, reporting, and record-keeping requirements on individuals and entities acting within the United States on behalf of foreign interests.

While the act has been amended many times, the early framework endures: persons defined as “agents” of a “foreign principal” must register with the U.S. government, make a public record of the nature of their principal-agent relationship, and maintain all private records for official inspection. FARA includes broad registration exemptions, however, and, because there have been relatively few administrative or judicial enforcement actions over the years, a number of ambiguities about the scope of the act’s requirements and exemptions persist.

Who Is a Foreign Principal?

FARA defines *foreign principal* to include

- governments of foreign countries;
- foreign political parties;
- entities organized under the laws of a foreign country or having their principal place of business in a foreign country; and
- persons outside the United States who are not U.S. citizens domiciled in the United States.

Who Is a Foreign Agent?

FARA’s definition of *agent of a foreign principal* has three necessary components that focus on the *type* of influence exerted over the agent, *who* is wielding influence over the agent, and the *activities* the agent is performing as part of this relationship.

First, an agent must act at “the order, request, or under the direction or control” of another. The Second Circuit has recognized that the “exact parameters of a ‘request’ under the act are difficult to locate, falling somewhere between a command and a plea.” Holding that no single factor is determinative, the court determined that “[o]nce a foreign principal establishes a particular course of conduct to be followed, those who respond to its ‘request’ for complying action may properly be found to be agents under the Act.” This is a broader conception of agency than courts traditionally apply in other areas of law, where a “request” may not be enough to establish that the agent’s actions subject the principal to legal liability.

Second, an agent must act at the behest of either (1) a foreign principal or (2) a person whose activities are

“directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal.” Some lower courts have held that an entity that receives foreign funding and acts to the benefit of foreign interests is not required to register under FARA unless the foreign funder subjects the recipient to its direction or control.

Third, an agent must act within the United States in one of the following ways:

- engaging in “political activities” in the interests of a foreign principal, which FARA defines to include any activities believed or intended to influence the U.S. government or public about U.S. policy or other foreign interests;
- acting as a publicity agent or political consultant in the interests of the foreign principal;
- soliciting, collecting, or disbursing money or other things of value in the interests of a foreign principal; or
- representing the interests of a foreign principal before any agency or official of the U.S. government.

Who Is Exempt?

FARA provides that the following entities are not required to register under the act:

- News or press services engaged in bona fide news or journalistic activities that are
 - organized under the laws of any U.S. jurisdiction;
 - at least 80% beneficially owned by U.S. citizens;
 - run by officers and directors who are U.S. citizens; and
 - not owned, directed, supervised, controlled, subsidized, or financed by any foreign principal or agent.
- Foreign diplomats, consular officers, or other recognized officials and staff.
- Persons engaging in private and nonpolitical activities in furtherance of a foreign principal’s bona fide trade or commerce. By regulation, commercial activities of state-owned companies are considered “private” “so long as the activities do not directly promote the public or political interest of the foreign government.” However, the Department of Justice (DOJ) has concluded that tourism promotion is not private or nonpolitical activity because tourism fosters economic development, which is in every foreign government’s public and political interests.

- Persons engaged in the solicitation or collection of humanitarian funds to be used only for medical assistance, food, and clothing.
- Persons engaging only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts.
- Attorneys engaged in the legal representation of a foreign principal before a U.S. court or agency as part of an official proceeding or inquiry.
- Agents engaged as lobbyists for a foreign nongovernmental person, corporation, or organization if the agent has registered under the Lobbying Disclosure Act of 1995.
- Persons engaging in other activities not serving predominantly a foreign interest.

Reporting and Record-Keeping Requirements

Agents of foreign principals that are not otherwise exempt must comply with FARA’s registration requirements, disclosure requirements, and record-keeping requirements.

Covered entities must file a registration statement with the DOJ within 10 days of becoming an agent of a foreign principal. The registration statement must include, among other information, the name and address of every foreign principal for whom the agent is acting, a comprehensive statement of the activities to be performed by the agent on behalf of the foreign principal, and the nature and amount of compensation the agent is to receive for these efforts. Agents must update these filings every six months.

An agent of a foreign principal must also file public copies of any “informational materials” that the agent disseminates among two or more persons in the interests of a foreign principal. These materials must include a conspicuous statement that the materials are distributed by an agent on behalf of a foreign principal.

Agents must also maintain all written records with respect to their activities for inspection by U.S. law enforcement.

Enforcement

Violations of FARA are subject to criminal and civil penalties. Generally, a person who “willfully” violates the act may face up to five years in prison and up to a \$10,000 fine.

A 2016 inspector general audit reported that historically the DOJ’s practice has been to pursue voluntary compliance rather than prosecution for agents who failed to register under the act. Between 1966, when FARA was amended to resemble its current form, and 2015, the DOJ brought seven criminal FARA cases. More recently, however, the DOJ has signaled that it is shifting “from treating FARA as an administrative obligation ... to one that is increasingly an enforcement priority.” For example, Special Counsel Robert Mueller’s investigation into Russian influence during the 2016 election resulted in several high-profile FARA convictions. In 2022, the DOJ reported it charged a

record number of criminal FARA cases. Additionally, in rare uses of its civil enforcement power, in 2019 the DOJ required a Florida broadcast company involved in the distribution of a Russian radio channel to register as a foreign agent, and in 2022 the DOJ sued to compel a U.S. businessperson to register as a foreign agent.

Proposals for Reform

A 2016 DOJ inspector general report recommended several legislative changes that could help the DOJ administer and enforce FARA, including the following:

- Refining the act’s broadly worded exemptions, which may make it difficult to determine whether think tanks, nongovernmental organizations, university and college campus groups, foreign media entities, and grassroots organizations that receive funding and direction from foreign governments qualify as foreign agents.
- Providing the DOJ’s FARA Unit with civil investigative demand authority to allow law enforcement to compel the production of records and testimony from suspected foreign agents.
- Updating the disclosure and labeling requirements to reflect the practical effects of internet and social media communications. For example, at the time of this report, Twitter’s character limits precluded agents from appending a full disclosure to each tweet.

In December 2021, the DOJ issued an Advanced Notice of Proposed Rulemaking seeking suggestions for any potential amendments to, or clarifications of, the current FARA implementing regulations. The DOJ sought preliminary input on matters such as the scope of an agency relationship with a foreign principal, FARA exemptions, advisory opinions, and labeling of informational materials.

In recent years, congressional interest in FARA has increased. Several bills were introduced (but not enacted) in the 117th Congress that sought to amend various parts of FARA. Broadly, some of these bills proposed to:

- provide civil investigative demand authority to DOJ,
- change penalties for non-compliance with registration requirements,
- repeal or modify FARA exemptions,
- amend FARA registration and disclosure requirements and public access to documents,
- alter requirements for the labeling of informational materials,
- restrict certain former officials from acting as foreign agents, and
- modify DOJ’s FARA administration.

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