

February 25, 2020

Foreign Agents Registration Act: 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 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 employment, and maintain all private records for official inspection. FARA contains broad exemptions, however, and, because there have been few administrative or judicial enforcement actions, 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
- individuals outside the United States who are not U.S. citizens domiciled in the United States.

Who Is a Foreign Agent?

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

First, an agent is someone who acts 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 significantly broader conception of agency than courts generally apply in other areas of law; traditionally, agency is found only where the relationship between agent and principal is close enough that the agent’s actions may subject the principal to legal liability.

Second, an agent is someone who acts 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 is someone who acts within the United States in one of the following ways:

- engaging in “political activities” in the interests of a foreign principal, which the act 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 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. By regulation, this exemption is not available to any person engaged in political activities in the interests of a foreign principal.
- 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 Department of Justice 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 also must 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 they are distributed by an agent on behalf of a foreign principal.

Agents also must 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 Department of Justice'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 Department of Justice brought seven criminal FARA cases. More recently, however, the Department of Justice has signaled that it is shifting "from treating FARA

as an administrative obligation . . . to one that is increasingly an enforcement priority." Special Counsel Robert Mueller's investigation into Russian influence during the 2016 elections resulted in several high-profile FARA convictions, and, in a rare use of its civil enforcement power, in 2019 the Department of Justice required a Florida broadcast company involved in the distribution of a Russian radio channel to register as a foreign agent.

Proposals for Reform

The 2016 Inspector General report suggested several legislative changes that could help the Department of Justice administer and enforce FARA, including the following:

- Refining the act's broadly worded exemptions, which sometimes 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 Department of Justice'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, Twitter's character limits preclude agents from appending a full disclosure to each tweet.

In the 116th Congress, a variety of bills have been introduced to amend FARA:

- H.R. 1522 would prohibit certain U.S. officials from serving as an agent of a foreign principal.
- H.R. 1566 would ensure online access to FARA registration statements.
- H.R. 3698 would impose additional disclosure requirements on registered foreign agents.
- H.R. 5733 would waive the application of the act to certain agents representing foreign enterprises that are not under the control or direction of foreign governments or foreign political parties.
- S. 1762 would provide the Attorney General with the authority to issue civil investigative demands to promote enforcement of the act.
- S. 3313 would limit the registration exemption for persons engaging in bona fide religious, scholastic, academic, scientific, or fine arts activities to activities that do not promote the political agenda of a foreign government.

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