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The Foreign Agents Registration Act: what political and public relations professionals should know

Consultants and other vendors in the political industry are increasingly taking notice of a once obscure federal law – the Foreign Agents Registration Act (FARA) – which requires the disclosure of certain domestic work performed on behalf of foreign entities. Originally enacted in 1938, the law is almost never prosecuted. And those with compliance obligations often have not observed or followed the law’s filing requirements. That appears to be changing. FARA registration filings increased by 50 percent from 2016 to 2017, and supplemental reporting more than doubled over the same period.¹ Odds are FARA activity will pick up even more this year.

Why the newfound interest in FARA? One reason: the investigation and indictment of Paul Manafort, Donald Trump’s former campaign manager. On Oct. 27, 2017, the United States Department of Justice (U.S. DOJ) filed criminal charges against Manafort alleging violations of FARA and other federal laws in connection with his work on behalf of foreign governments and political parties. As a consequence, FARA is now a steady topic of national news, and the political and public relations consulting industry is on notice.

FARA — the basics

FARA is a federal law that requires any person acting as an agent of a foreign principal in a political capacity to register with the U.S. DOJ and report periodically about the relationship with the foreign principal.² The purpose of the law is **disclosure**: to ensure that the U.S. government and the American people are aware of the identity and activities of individuals who are attempting to influence domestic policy and public opinion on behalf of foreign entities.

FARA requires that “agents of a foreign principal” register and make regular filings with the U.S. DOJ. The application of FARA depends upon a few key defined terms:

- **Agent of a foreign principal:** Under the law, an “agent of a foreign principal” includes “any person who acts ... at the order, request, or under the direction or control, of a foreign principal ... and who directly or through any other person ... engages within the United States in political activities for or in the interests of such foreign principal ... [or] acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal”³

¹ Julia Ainsley et al., *The Mueller Effect: FARA filings soar in shadow of Manafort, Flynn probes*, NBC News (Jan. 19, 2018), [available here](#).

² 22 U.S.C. §§ 611-621.

³ 22 U.S.C. § 611(e).

- **Foreign principal:** A “foreign principal” includes foreign governments, foreign political parties, foreign individuals, foreign non-governmental organizations, and foreign businesses.⁴
- **Political activities:** The law defines “political activities” very broadly to include “any activities 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 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 foreign political party.”⁵

Determining whether FARA applies to certain projects is not always clear. In some circumstances, a political consultant may be doing work for an organization that is not clearly under the control or direction of a foreign government or political party. But that organization may receive a substantial portion of its funding from a foreign principal such that the work the organization is directing could trigger FARA obligations. Consultants and other vendors should reasonably investigate the funding sources for their work and evaluate whether the work they are being asked to perform is for or on behalf of a foreign principal.

Registration

FARA agents must file an initial Registration Statement within 10 days of their agreement to become an agent. The initial Registration Statement, Form NSD-1, requires disclosure of the following information:

- Name, address and general information about the FARA agent, including a listing of partners, directors and officers;
- Listing of all employees who render services on behalf of the foreign principal;
- Identification of the foreign principal on whose behalf the agent is registering;
- Reporting obligations, if any
- Activities engaged in on behalf of the foreign principal;
- Receipts from, and disbursements made for, the foreign principal within the previous 60 days; and
- Plans for disseminating “informational materials” on behalf of the foreign principal.

Two exhibits must be filed along with the initial Registration Statement: Exhibit A and Exhibit B. Exhibit A (Form NSD-3) identifies the foreign principal and includes basic information about it. Exhibit B (Form NSD-4) identifies whether there is a written agreement between the foreign principal and the agent. If such an agreement exists, then a copy of that agreement must be filed. If there is only an oral agreement, Exhibit B must describe the terms and conditions of the underlying oral arrangement. If the FARA agent is an organization, Exhibit C (a copy of the organization’s articles of incorporation and bylaws) also must be filed. Exhibit D (an accounting of money collected or received as a result of a fundraising campaign and transmitted for the foreign principal) may also be required. There are no template forms for Exhibits C and D.

If the FARA agent is an organization, the initial Registration Statement is completed on behalf of the organization and then individuals working on behalf of the organization, including the organization’s employees, complete and file Short Form Registration Statements (Form NSD-6). The Short Form Registration Statement is a brief, two-page form identifying the individuals working on behalf of the organization and generally describing the types of activities that he or she may engage in on behalf of the foreign principal.

Semi-annual reporting

FARA also requires periodic reporting to U.S. DOJ, via a Supplemental Statement (Form NSD-2) that must be filed every six months until the agent’s relationship with the foreign principal is terminated.

⁴ 22 U.S.C. § 611(b).

⁵ 22 U.S.C. § 611(o).

The six-month reporting deadlines are determined from the date of the initial registration filing: the first deadline is 30 days after the expiration of the initial six-month period. The purpose of the Supplemental Statement is to disclose any changes relating to the agent’s relationship with the foreign principal, to identify the activities performed on behalf of the foreign principal and to list any receipts or disbursements during the six-month reporting period.

Informational materials

If a FARA agent distributes “informational materials” by mail or by any means or instrumentality of interstate or foreign commerce for dissemination among two or more persons for (or in the interest of) a foreign principal, the agent must:

- File a copy of the informational materials with the U.S. DOJ within 48 hours of distribution; and
- Include a conspicuous statement on the “informational materials” which states as follows:

This material is distributed by [FARA agent] on behalf of [name of foreign principal].
Additional information is available at the Department of Justice, Washington, DC.

“Informational materials” include “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.”⁶ The disclosure requirements also apply to websites, social media and text messaging.

Documents filed pursuant to FARA are considered public records. A searchable online database of FARA filings is [available here](#).

Enforcement and penalties

FARA is administered and enforced by the FARA Registration Unit within the National Security Division of the U.S. DOJ. Any person who “willfully violates” any provision of FARA or who “willfully makes a false statement of a material fact or willfully omits any material fact required to be stated” by FARA may be punished by a fine of up to \$10,000 or by imprisonment for up to five years.⁷ Any person who violates the requirements regarding the disclosure of “informational materials” may be fined up to \$5,000 or imprisoned for up to six months.⁸ Failure to file any required registration statement (or supplemental statement) is deemed a “continuing offense for as long as such failure exists.”⁹

If you have any questions regarding FARA compliance, please consult with counsel.

⁶ 22 U.S.C. § 614; OMB No. 1124-0001 (rev. 2017); U.S. Dep’t of Justice, FARA Frequently Asked Questions, [available here](#).

⁷ 22 U.S.C. § 618(a).

⁸ *Id.*

⁹ 22 U.S.C. § 618(e).