

Foreign Agents Registration Act: Rising Out of Obscurity

Article By:

Fatema K. Merchant

Who would have thought that a little-known, 1930s-era law would suddenly become a household name? Not me. Not even as an attorney who counsels clients on compliance with the law and maintains a healthy (read: nerdy) interest in it.

The ***Foreign Agents Registration Act (FARA)***, which requires agents of foreign principals, including foreign governments, to register with the U.S. government, was enacted in 1938 in response to concerns about Nazi and Communist propaganda spreading in the United States. According to the Department of Justice, the purpose of the law is to ensure that the American people and the U.S. government understand the true source of information and propaganda; who is actually “attempting to [influence](#) public opinion, policy, and laws.”

In the last two months, we have heard a lot about FARA in the news. According to recent reports, at least two of President Trump’s former advisers failed to register under FARA while they were reportedly being paid by foreign principals to influence public opinion and policy in the United States. Former National Security Adviser Michael Flynn registered as a foreign agent last month, though his firm was being paid by the Turkish government for public relations work throughout 2016. Trump’s former campaign manager, Paul Manafort, was reportedly engaged to lobby on behalf of pro-Russia Ukrainian leaders and a Russian oligarch connected to Vladimir Putin. In that position, the FARA would require Mr. Manafort to register as an agent of a foreign principal.

FARA’s Requirements

Broadly speaking, under [FARA](#)^[1], persons who are acting on behalf of “foreign principals” in a political capacity or lobbying capacity must make disclosures of certain activities and their relationship with foreign principals to the U.S. government.

Specifically, FARA covers any individual or entity:

- Acting “as an agent, representative, employee or servant” of a foreign principal, under the direction of a foreign principal, or even someone who holds him or herself out to be acting on behalf of a foreign principal (whether or not under a contractual relationship); and

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- Doing any of the following:
 1. Engaging in “political activities” for or in the interest of the foreign principal;
 2. Acting as a foreign principal’s publicity agent, political consultant, or in the interests of the foreign principal;
 3. Conducting fundraising and disbursement activities for the foreign principal; or
 4. Representing a foreign principal before any U.S. government agency or U.S. public official
 - In the United States.

Persons covered by the description above must register with the DOJ. They must submit documents detailing the following:

- The nature of their activities;
- Their contract with the foreign principal;
- Their income from the foreign principal; and
- Their expenditures on behalf of the foreign principal.

FARA also requires periodic disclosures by the foreign agent and supplemental disclosures if the activities or relationship change.

Importantly, the definition of “foreign principal” includes not only foreign governments, but foreign political parties or candidates, any foreign person not domiciled in the United States, and any foreign entity organized under laws outside the United States.

It is important to remember that FARA itself doesn’t prohibit U.S. private persons from any particular political activity. The law does not restrict U.S. persons from engaging in lobbying activities on behalf of foreign governments. It simply requires that those agents for foreign principals register with the U.S. government.

FARA does however, make it a crime if a foreign agent fails to register or makes a false statement or omission in connection with its registration. A person who fails to comply with FARA is subject to civil or criminal penalties of up to \$10,000 and/or five years in prison. Additionally, U.S. public officials are prohibited from acting as foreign agents and can face up to \$250,000 in fines and/or two years in prison for violations.^[2]

What are Political Activities?

FARA is pretty broad. Of course it covers lobbyists for foreign governments meeting with Congress to influence U.S. foreign policy. But some of the activities covered under FARA are not so obvious. The

activities covered arise from the concern that the intent of a foreign agent may be to influence public opinion or U.S. policy. That means a foreign agent does not have to be successful or even good at his or her job – it only matters that he or she *intends* to influence public opinion or U.S. policy.

“The term “political activities” means 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”

Interestingly, if a foreign agent disseminates “informational materials” on behalf of a foreign principal, those materials must be labeled with a “conspicuous” statement stating that the materials are being distributed on behalf of a foreign principal, specifying the foreign individual or entity.

FARA Enforcement

Enforcement of FARA is the responsibility of the FARA unit of the DOJ’s National Security Division. In practice, when most FARA violations are discovered, the DOJ provides the individual or entity an opportunity to rectify the failure to register rather than impose civil or criminal penalties. That is the case because most violations are inadvertent.

On March 14, 2017, Senators Todd Young and Jeanne Shaheen introduced the Foreign Agents Registration Modernization and Enforcement Act (2017-2018). The bipartisan legislation would strengthen FARA by giving DOJ authority to investigate potential violations of FARA. The legislation is targeted to allow for the investigation into RT America, the U.S. television channel affiliated with the RT network, based in Moscow and funded by the Russian government. The Act also would amend FARA’s informational materials provision to include social media and email.

Why It Matters

First, many regular people are professionals engaged by foreign principals for a variety of services such as consulting for foreign political candidates or foreign state-owned companies, speechwriting, preparing press releases, media messaging, and a host of other activities. If you are hired by a foreign principal, we recommend you consult with a FARA expert to determine whether you are required to register. Second, we now find ourselves in a new era of political propaganda. News of semi-public officials potentially acting on behalf of foreign governments is important. Russia’s involvement in systematic efforts to interfere in the 2016 U.S. election highlights the fact that foreign propaganda can infiltrate our civic and democratic processes in new and different ways. Such hidden foreign interference in U.S. governance may trigger an enforcement response that sees a resurgent relevance and force behind FARA.

The potential for increased FARA enforcement gives businesses and individuals good reason to get smart on the once-obscure law. The old law with new importance may soon become a critical shield in defending the country’s democratic institutions.

[1] 22 U.S.C. §§ 611-621

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