

Foreign Agents Registration Act (FARA) in the Spotlight

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In recent months, several high-profile registrations, together with an unflattering audit by the U.S. Department of Justice's (DOJ) Inspector General, have thrown a little-known statute called the Foreign Agents Registration Act (FARA) into the spotlight.

- Just last month, Paul Manafort, President Trump's former campaign manager, filed as a foreign agent for consulting work performed on behalf of a pro-Russia political party in Ukraine between 2012 and 2014. His retroactive FARA filing came after press reports emerged revealing his work for the political party.
- Also last month, lobbyist Jack Abramoff retroactively registered under FARA for his attempts to arrange a meeting between the Republic of Congo and President Trump.
- And, earlier this year, President Trump's former national security adviser, Michael Flynn, registered under FARA for lobbying work performed on behalf of the Turkish government.

Notably, these registrations fall closely on the heels of a DOJ Inspector General report issued last September, faulting the agency's National Security Division (NSD) for its lax enforcement of the statute. Since then, the DOJ has become more aggressive in ensuring that foreign agents register their activities.

FARA, enacted in 1938 and administered by the FARA Registration Unit of the Counterespionage Section in the NSD, requires that all persons acting as an "agent of a foreign principal" must register with the DOJ, unless an exception applies. The scope of FARA is far-reaching, rendering many unsuspecting political consultants,

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lobbyists, public relations counsel, etc., subject to registration. The statute defines a “foreign principal” to include not only foreign governments and foreign political parties, but also foreign persons and corporations. Moreover, the statute defines an “agent of a foreign principal” to include any person who has an agency relationship with the foreign entity and engages in public relations, image-making, or political activities for or on behalf of that foreign entity. The statute broadly defines “political activities” to include “any” activity that the agent believes will, or intends to, in “any way” influence the U.S. government or public with respect to formulating, adopting, or changing U.S. domestic or foreign policy, capturing a significant amount of activity. The penalties for noncompliance can be significant. Criminal penalties can and have been imposed on agents who intentionally and willfully violate the statute. Moreover, unintentional or negligent violations can be met with fines, remedial action, and negative press, which is often the most harmful to an agent action.

Given the broad scope of the statute, the potential consequences of noncompliance, and the DOJ’s heightened focus on FARA enforcement, it is important that individuals and companies representing foreign individuals, governments, or companies in the U.S. in a political or quasi-political capacity carefully evaluate whether their activities may trigger registration under FARA and consult counsel when in doubt. Although registration and compliance can be burdensome, it is a manageable affair. Moreover, when representing foreign corporations, agents can often comply through the Lobbying Disclosure Act (LDA) regime. Knowledgeable counsel, such as those at Wiley Rein, can provide the best and most efficient path forward.