

Senator Grassley and Representative Johnson Introduce Bill to Strengthen Enforcement, Compliance, and Oversight of Foreign Agents Registration Act

November 2017

On October 31, 2017, U.S. Senate Judiciary Committee Chairman Chuck Grassley and U.S. House of Representative Judiciary Committee member Mike Johnson introduced the *Disclosing Foreign Influence Act*, which aims to strengthen the Foreign Agents Registration Act (FARA) by clarifying reporting requirements, enhancing investigative tools, and establishing new enforcement safeguards.

This legislation falls closely on the heels of several high profile FARA-related developments, including the U.S. Department of Justice's (DOJ) indictment of Paul Manafort and his associate Rick Gates at the end of October for several alleged crimes, including acting as unregistered agents of the Government of Ukraine, the Party of Regions, and the Opposition Bloc, and making false and misleading FARA statements. This legislation also comes in the wake 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, as evidenced by its recent request that Russian-government backed broadcaster RT register as an agent of a foreign principal and that both Jack Abramoff and Michael Flynn retroactively register for their work for foreign principals.

Authors

Tessa Capeloto
Partner
202.719.7586
tcapeloto@wiley.law

Practice Areas

Election Law & Government Ethics
Foreign Agents Registration Act (FARA)
International Trade

The FARA statute, enacted in 1938 and administered by the FARA Registration Unit of the Counterespionage Section in the National Security Division, 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, 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 *Disclosing Foreign Influence Act* proposes a number of amendments to the FARA statute, including providing the Attorney General with Civil Investigative Demand authority to investigate possible violations by those who should register as foreign agents; requiring DOJ to develop a comprehensive enforcement strategy for FARA; requiring the DOJ Inspector General to report on this enforcement strategy within one year of enactment; and requiring the U.S. Government Accountability Office (GAO) to produce a report on the effectiveness of these amendments. However, the most significant of these amendments is arguably the *Disclosing Foreign Influence Act’s* proposed removal of the Lobbying Disclosure Act (LDA) exception, which allows agents of non-foreign government and political parties to comply with their registration obligation through the LDA. Because registration under the LDA is generally less burdensome than FARA registration, lobbyists and PR counsel who represent foreign individuals and companies in the United States typically chose to avail themselves of the LDA exception and to register under the LDA instead of FARA. This means that if Senator Grassley’s and Representative Johnson’s bill is enacted, a large number of once-exempted foreign agents could find themselves having to register under FARA as well.

Given the broad scope of the statute, the potential consequences of noncompliance, and the fact that DOJ’s and Congress’ focus on FARA enforcement has only strengthened in recent months, it is important for individuals and companies that represent foreign interests in the United States, whether directly or indirectly, to be aware of the statute’s current registration and reporting obligations (and potential changes to these obligations), and to ensure maximum compliance with the statute.