

ALERT

DOJ Makes FARA “Letters of Determination” Public as FARA Enforcement Remains a Top DOJ Priority

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The U.S. Department of Justice (DOJ) Foreign Agents Registration Act (FARA) Unit recently published more than a dozen letters that the government sent to entities or individuals in recent years to notify them of an obligation to register under FARA. This revelation marks the first time that the DOJ has made FARA “Letters of Determination” publicly available and provides significant insight into how the FARA Unit analyzes whether an entity is required to register as a foreign agent.

FARA is a disclosure statute designed to promote transparency in the United States political process, media and public relations arena, and other areas with respect to foreign influence. In short, the law requires every person acting as an agent of a foreign principal—*i.e.*, engaging in certain political or quasi-political activities in the United States on behalf of a foreign government or entity—to provide periodic disclosures to the DOJ that lay out certain details of the agent’s relationship with and work for the foreign principal.

The FARA Unit, now led by Brandon Van Grack, has intensified its enforcement efforts in recent years. In 2016, the DOJ Inspector General audited the Department’s FARA enforcement and found that FARA registrations had sharply declined since the 1990s and that the FARA Unit rarely pursued enforcement actions. The Inspector General’s report—at least in part—sparked congressional hearings, legislative reform efforts, as well as changes within the DOJ, including several high-profile criminal prosecutions and civil actions.

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The DOJ's publication of FARA Letters of Determination indicates that the DOJ is still focused on bolstering FARA enforcement and clarifying registration requirements. The FARA Unit sends Letters of Determination to entities and individuals when it has reached a determination as to whether that entity or individual has an obligation to register under FARA. Letters of Determination include an account of the relevant facts, the applicable statutory and regulatory provisions, and the FARA Unit's legal analysis.

Fifteen of these Letters of Determination transmitted between 2017 and 2019 are now available on the DOJ's website. All 15 are letters that resulted in an entity or individual registering as a foreign agent under FARA. Ten of the letters are addressed to media companies that were producing and/or broadcasting content within the United States on behalf of a foreign principal. For instance, the DOJ determined that one U.S. broadcaster had an obligation to register for two distinct reasons: (1) because it performed "political activities" by producing content for a foreign news network that reflected a demonstrable foreign government viewpoint that was meant to influence the American public with respect to U.S. foreign policy; and also (2) because it served as a "publicity agent" and an "information-service employee" by producing broadcast media content within the United States under the direction or control of a foreign news organization.

The other Letters of Determination are addressed to lobbying shops and law firms that were conducting political activities intended to influence U.S. government officials, business leaders, or members of the media.

Several of the letters find that FARA's Lobbying Disclosure Act (LDA) exemption is unavailable to the foreign agents because although the foreign principal was a private entity, the principal beneficiary of the political activities at issue was a foreign government or political party. For example, the DOJ concluded that one public relations organization was required to register without the benefit of the LDA exemption because it had carried out a "U.S. media campaign on behalf of a foreign national" and because a foreign government "was the principal beneficiary of the U.S. media." The public relations organization had registered its activities under the LDA and subsequently claimed FARA's LDA exemption by asserting the principal beneficiaries of the U.S. media campaign were the organization itself and the foreign national, not a foreign government. The DOJ rejected this argument because: (1) the U.S. media campaign was nearly a mirror image of the foreign government's recent foreign policy actions and pronouncements, and (2) another lobbying firm had registered with FARA as a foreign agent and described the same U.S. media campaign in terms that clarified that the purpose of the campaign was to elevate the foreign government's profile in the United States and reinforce U.S. support for that foreign government's position on a particular issue.

The DOJ's publication of the FARA Unit's Letters of Determination makes public the government's legal analysis of activities that trigger FARA registration requirements. This information is important for any entity considering whether it has an obligation to register under FARA.

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