

## ARTICLE

# Increased FARA Enforcement May Lie Ahead

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The indictment of Paul Manafort and Richard Gates on Monday brings into focus a federal statute not often employed by prosecutors. The Foreign Agents Registration Act (FARA), once a little-known law, is now front and center in the national media. The law has been on the books since 1938, and is a disclosure statute that requires persons acting as agents of foreign principals in a political or public relations capacity to make periodic public disclosure of their relationship with the foreign principal, as well as their activities within the United States.

This almost 80-year-old law has also been the topic of a recent congressional hearing. On July 26 and 27, 2017, the Senate Judiciary Committee held a hearing titled "Oversight of the Foreign Agents Registration Act and Attempts to Influence U.S. Elections: Lessons Learned from Current and Prior Administrations." Throughout the hearing the committee asked numerous questions of the witnesses regarding potential foreign interference with the 2016 election, Russian attempts to revoke the Magnitsky Act, and other controversies.

For years, FARA went mostly unnoticed and was known to a relatively small circle of individuals who practiced in this specific area of the law or were involved in the business of representing foreign governments' political interests in Washington, D.C. However, in 2016, the U.S. Department of Justice Office of Inspector General issued a report on FARA, providing recommendations to improve detection of violations and increase enforcement. FARA also started cropping up in the headlines in the months leading up to the hearing. Shortly thereafter a series of stories began to run in the news regarding a variety of potential FARA violations. As stories like these bring FARA

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Foreign Agents Registration Act (FARA)  
International Trade

into the Washington limelight, those working on behalf of foreign entities should be cognizant of the potential for increased enforcement under the statute.

### **What is FARA?**

FARA, 22 U.S.C. § 611 et seq., was enacted in 1938 as an effort to track German agents spreading Nazi propaganda in the United States. In its current form, the statute imposes disclosure requirements on a broad swath of individuals and entities that advocate on behalf of foreign interests.

FARA requires any agent working on behalf of a foreign interest in regard to certain “covered activities” to register with the U.S. Attorney General within 10 days of becoming an agent. The required registration statement form is provided by the DOJ and must be signed under oath. The registration statement requires information about the agent’s relationship with the foreign principal, including the nature of the agent’s business, the foreign principal’s activities, any written agreement between the agent and principal, and a list of all contributions, income, or other things of value earned from the principal or spent by the agent. Supplemental registration statements must be filed every six months, and certain information must be updated within 10 days of any change. FARA requires these registration statements and other FARA disclosures to be made available for public inspection. The DOJ maintains a public online database where these records can be searched and reviewed.

Agents are also required to keep books and records of all activities that must be disclosed under FARA. Such books and records are subject to audit and inspection by the DOJ and the FBI. Furthermore, agents appearing before a congressional committee must furnish a copy of their most recent FARA registration statement to the committee. Similarly, an agent transmitting “informational materials” for a foreign principal must include a “conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal” and that further information is available through the DOJ. Finally, agents are barred from entering into any contingent fee arrangement with a foreign principal under which payment depends “upon the success of any political activities” taken by the agent.

FARA’s requirements are backed by significant enforcement provisions. Any person who willfully violates FARA or willfully makes a material false statement or omission on a registration statement, can be fined up to \$10,000 (\$5,000 for certain technical violations) or imprisoned for up to five years (six months for certain technical violations) or both. Furthermore, any noncitizen convicted of violating FARA is subject to removal under the Immigration and Nationality Act. The DOJ may also apply to the district courts for an injunction prohibiting an agent from continuing to act as such or requiring an agent to comply with FARA’s obligations.

### **Who Should Be Concerned About FARA?**

This little-known statute covers a surprising number of individuals and entities. Any “agent” conducting “political” or quasi-political activities on behalf of a “foreign principal” is potentially subject to FARA.

Agency under FARA is not limited to affiliations created by express agreement, and may encompass de facto agency relationships. An “agent” includes any person working on behalf of another person “whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal,” if that person engages in political or public relations activity for the principal, transacts in money or other things of value for the principal, or represents their interests before the government.

“Political activities” is defined broadly to include action intended to “in any way influence” any U.S. government agency or official, or any segment of the public, regarding any domestic or foreign policy or regarding foreign interests.

The term “foreign principal” is also comprehensive, encompassing not only foreign governments and political parties, but foreign entities, noncitizens living outside of the United States, and entities that are either not registered in the United States or do not maintain their principal place of business here.

Several categories of persons are exempt from FARA’s disclosure requirements, including diplomatic and consular offices and staff; officials of foreign governments; persons engaging solely in private, nonpolitical activities to further trade or commerce; persons pursuing religious, scholastic, or scientific pursuits; attorneys representing a foreign principal before a court or U.S. government agency; and certain persons acting in furtherance of national defense policies. Agents who have registered under the Lobbying Disclosure Act are also exempt, unless the agent’s principal is a foreign government or political party. It should be noted however that many of the exemptions are drafted very narrowly.

### **Conclusion: Increased Enforcement Ahead**

Although Congress clearly intended to give FARA teeth, enforcement actions under the statute have been relatively rare. Indeed, several senators raised enforcement-related issues during the Judiciary Committee’s recent hearing. Additionally, the OIG report, discussed above, presented 14 specific recommendations, including the creation of a “comprehensive system” to track FARA cases, expanded resources for identifying FARA violations, and an evaluation of FARA’s many exemptions.

The OIG report also noted that the DOJ’s National Security Unit has sought civil investigative demand authority from Congress on several occasions to increase its ability to investigate FARA violations. During the Judiciary Committee hearing, Adam Hickey, deputy assistant attorney general for the National Security Division (NSD), explained that the FARA unit currently relies on publicly available information and data provided by other agencies. If granted civil investigative powers, this authority would greatly augment the DOJ’s ability to identify and prosecute agents not in compliance with the statute. Hickey appeared to indicate that the NSD is working with a number of congressmen to discuss potential legislation, but did not provide any details.

Monday’s indictment of Paul Manafort and Richard Gates may be the first sign of an uptick in FARA enforcement. And with FARA appearing in newspaper headlines on an almost daily basis, it is reasonable to expect that this law is likely to get more attention from Congress in the very near future.