

One Minute Memo®



Smoke Signals Out of Washington Suggest Increased Enforcement of the Foreign Agents Registration Act

By Andrew S. Boutros and John R. Schleppenbach

Following the October 27, 2017, indictment of Paul Manafort, legal experts and savvy political actors alike expressed surprise to see charges brought under the Foreign Agents Registration Act (FARA), a seldom-used statute enacted in 1938 to combat the rise of Nazi propaganda activity in the United States. In the nearly 50 years between 1966 and 2015, only seven criminal prosecutions had ever been brought under FARA, and only one of those resulted in a conviction at trial. The charges against Manafort appear to have led to a substantial uptick of new FARA filings; since Special Counsel Robert Mueller started his probe in May 2017 through the present, approximately 100 new registrants have filed under FARA, which represents a 75 percent increase in new registrants as compared to the same period a year earlier.

In addition, late last year Iowa's U.S. Senator and Chairman of the Senate Judiciary Committee, Chuck Grassley, introduced a bill that seeks to strengthen FARA by giving the Justice Department's FARA unit the power to issue civil investigative demands and directing the Attorney General to "develop and implement a comprehensive strategy to improve the enforcement and administration of" FARA. Significantly, the bill would also remove one of FARA's current and often-used exemptions, which allows agents for foreign entities to avoid the requirement to complete detailed FARA filings by instead filing an abbreviated form under the Lobbying Disclosure Act. Senator Grassley's bill follows a similar March 2017 bill introduced by New Hampshire's U.S. Senator Jeanne Shaheen, suggesting that there is some level of bipartisan support for FARA's increased enforcement.

In light of these signs of increased FARA enforcement, companies and those who do business internationally would do well to consult with experienced counsel about the statute, which contains broad language that brings a wide range of entities and individuals within its scope. For example:

- With certain exemptions, FARA requires all agents of foreign principals to file registration statements with the Attorney General within ten days of becoming an agent, with periodic updates to follow.
- "Foreign principals" are broadly defined to include all foreign governments, political parties, people, and organizations.
- "Agents" encompass all those who (1) engage in political activities in the United States, (2) act as public relations

representatives, (3) solicit or dispense contributions or other things of value, or (4) interact with a U.S. government agency on behalf of a foreign principal.

Thus, companies and individuals—particularly those in media—must pay particularly close attention to whether they may have FARA-filing responsibilities of which they have previously been unaware or lackadaisical. In the alternative, to the extent a company or individual potentially falls within one of FARA’s exemptions (and there are several), that entity or person would be well served to avoid taking a do-it-yourself approach to these intricate legal questions.

For the full version of this article, which originally appeared in *Bloomberg Law White Collar Report*, 13 WCR 260 (March 30, 2018), [click here](#).

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