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Chief, Counter-Intelligence and Export Control Section
U.S. Department of Justice
FARA Unit, Room 1.100
175 N. Street NE, Bldg. 3
Washington, D.C. 20002

Submitted electronically

RE: Proposed Rulemaking for “Amending and Clarifying Foreign Agents Registration Act Regulations,” RIN 1124-AA00

Dear Chief Geillie:

Public Citizen submits these comments regarding certain aspects of the Justice Department’s proposed rulemaking to amend and clarify the Foreign Agents Registration Act (FARA) guidelines and regulations.

The Foreign Agents Registration Act of 1938 (FARA) is a long-standing but loosely-worded disclosure law that requires those who represent “foreign principals” to affect public policies in the United States, either through grassroots lobbying or direct lobbying, to register and disclose those activities with the Department of Justice FARA Unit and to the public via online disclosures and disclaimers on informational materials.

There are several exemptions to FARA’s reporting requirement listed in 22 USC §613. These include: (a) diplomats, (b) government officials, (c) diplomatic staff, (d) strictly commercial transactions, (e) religious, academic or charitable functions, (f) national defense, (g) legal representation and (h) the LDA exemption.

In the wake of the 2016 election cycle, concerns have been raised about foreign influence in American politics and the porous compliance to the disclosure law. A September 2016 audit of FARA by the Justice Department’s Office of Inspector General found numerous shortcomings in the law as well as the administration of the law by the Justice Department.¹

¹ U.S. Department of Justice, Office of Inspector General, Audit of the National Security Division’s enforcement and administration of the Foreign Agents Registration Act (Sept. 2016), available at: <https://oig.justice.gov/reports/2016/a1624.pdf>

While the most egregious shortcomings of FARA need to be addressed by legislation, significant improvements can be made via regulations. Public Citizen recommends that the Justice Department take the following steps to improve the administration of the Act:

- Keep exemptions from FARA registrations, especially the commercial exemption and the LDA exemption, as narrow as possible so as not to facilitate evasion of the law.
- Avoid standardizing an automatic exemption for recreational or business travel promoted in the interest of a foreign principal.
- Modernize the on-line records of FARA registrations and filings into a fully electronic filing and disclosure system that is searchable, sortable and downloadable comparable to the current LDA and FEC disclosure systems.
- Urge Congress to grant Civil Investigative Demand (CID) authority to the FARA Unit and establish appropriate civil fines for violations of FARA.

Public Citizen would also like to see other measures taken to enhance FARA, such as an end the LDA exemption, but these steps require legislative action and are outside the purview of this rulemaking.

BACKGROUND

Prior to 2016, the Department of Justice (DOJ) did not make enforcement of the registration and disclosure requirements of FARA a priority. Between 1966 and 2015, when the scope of FARA was first expanded beyond addressing foreign propaganda, the Department of Justice brought only seven criminal FARA cases.² In all likelihood, DOJ was probably more concerned with counterintelligence activities and espionage by foreign governments rather than viewing itself as a disclosure agency.

FARA violations catapulted onto the Justice Department's agenda with several egregious and deliberate attempts by foreign governments and their agents to conceal large-scale efforts to manipulate American public policy through surreptitious lobbying and publicity campaigns. The groundbreaking for more extensive FARA enforcement began with allegations of Russian intervention in U.S. elections and, particularly, the clandestine lobbying efforts by Paul Manafort and Richard Gates around the 2016 presidential election. Manafort and Gates were paid an estimated \$75 million by the pro-Russian Ukrainian party to promote its interests, especially within the ranks of the Republican party. They went to considerable lengths to hide the arrangement by laundering the funds through a nonprofit organization.³ Eventually, this led to guilty pleas to criminal charges of violating FARA.

Several other high-profile cases followed. The Russian Internet Research Agency and multiple Russian nationals were prosecuted for violating FARA. Former national security advisor, Michael Flynn, pleaded guilty to making false statements and concealing his paid representation

² Id.

³ Lydia Dennett, "The 'foreign agents' law Paul Manafort is charged with breaking is wildly unenforced," *Vox* (Nov. 3, 2017), available at: <https://www.vox.com/the-big-idea/2017/11/3/16596484/fara-foreign-agents-registration-manafort-enforcement-scandal>

on behalf of the government of Turkey. And the Justice Department obtained another FARA conviction against Nisar Ahmed Chaudhry, a Pakistani national and U.S. permanent resident, who knowingly and willfully failed to disclose his lobbying efforts on behalf of the Pakistani government from 2012 to 2018.⁴

Up until then, the Inspector General's audit of FARA enforcement actions documented a 60 percent drop in registered foreign agents and a 73 percent drop in registered foreign principals since the mid-1990s as well as a general disregard for timely filing and accurate reports.⁵ That pattern reversed following the new wave of high-profile prosecutions. Since 2016, there has been more than a 30 percent increase in registrations of foreign agents.⁶ As of February 2025, there are now 545 active registrants of foreign principals, 2,434 registrants of active staff supporting the foreign agents, and representing 766 active foreign principals in all countries.⁷

Nevertheless, the full story of foreign influence over American domestic and foreign policy and American public opinion is still not being told. The exemptions from FARA registration – particularly, the commercial commerce exemption and the LDA exemption – allow nearly all of those representing foreign-affiliated corporations and many of those representing foreign governments and political parties to evade the comprehensive disclosure requirements of FARA.

The exemptions allow agents of foreign principals, under the “LDA exemption,” to register and disclose their activities under the less stringent disclosure requirements of the Lobbying Disclosure Act (LDA) on behalf of foreign non-governmental entities. Agents of foreign governments and parties may also sidestep FARA registration and disclosure under the “commercial exemption” if they engage only in either “(1) private and nonpolitical activities in furtherance of bona fide trade or commerce of such foreign principal or (2) in other activities not serving predominantly a foreign interest.”

Lobbyists on behalf of foreign principals flock to either of these exemptions if it can reasonably be suggested they qualify. Sometimes, as evidenced by some of the more scandalous evasions noted above, they conceal their true representational interests. Either way, the influence of these foreign principals and their agents is not adequately, if at all, disclosed to U.S. officials and the American public generally. Furthermore, foreign governmental and commercial interests, which are not always as distinct as they are in the United States, may in fact quietly be acting under the direction and control of a foreign government.

⁴ David Laufman, “Paul Manafort guilty plea highlights increased enforcement of the Foreign Agents Registration Act,” *Lawfare* (Sept. 14, 2018), available at: <https://www.lawfaremedia.org/article/paul-manafort-guilty-plea-highlights-increased-enforcement-foreign-agents-registration-act>

⁵ U.S. Department of Justice, Office of Inspector General, Audit of the National Security Division's enforcement and administration of the Foreign Agents Registration Act ((Sept. 2016), available at: <https://oig.justice.gov/reports/2016/a1624.pdf>

⁶ Joshua Fattal, “The Justice Department's new, unprecedented use of the Foreign Agents Registration Act,” *Lawfare* (Dec. 18, 2019), available at: <https://www.lawfaremedia.org/article/justice-departments-new-unprecedented-use-foreign-agents-registration-act>

⁷ FARA on-line database, <https://efile.fara.gov/ords/fara/f?p=1381:1:6560414756286:::>

Promoting recreational or business travel at the behest of a foreign principal also provides opportunities for abuse. On its face, tourism and business travel provide direct financial benefits for a foreign economy and rewards the governmental authorities managing economic affairs. This alone warrants disclosure of who is directing and financing such promotions. Of even greater concern is foreign travel arranged for an unstated, or even hidden, purpose of fostering the political interests of the foreign government. Cases are not uncommon of foreign governments secretly financing and arranging travel of U.S. governmental officials for political opportunism. For example, Public Citizen previously filed a complaint against Park Strategies, LLC, for violating ethics rules by sponsoring congressional travel that appeared to be covertly financed by the Chinese Cultural University of Taiwan, an entity controlled and directed by the government of Taiwan.⁸ And there is ongoing concern about whether the congressional junkets to Israel organized and paid for by American Israel Education Foundation, a nonprofit wing of AIPAC, are actually directed at the behest of the Israeli government.⁹

Compounding the problem, the Justice Department's fact-finding options to determine whether an agent is ultimately acting for the primary benefit of a foreign interest or foreign governmental entity are constrained. The FARA Unit does not have the authority to require the production of potentially revealing documents or even compel straightforward answers to questions unless it has initiated civil injunctive action or a criminal investigation. Lacking civil investigative demand authority, the FARA Unit must rely on voluntary cooperation to determine whether registration is required.

Several legislative proposals were introduced in the 115th Congress to strengthen the enforcement of FARA following the recommendations offered by the Office of Inspector General. The "Disclosing Foreign Influence Act" (HR 4170 and S. 2039) by Rep. Mike Johnson (R-La.) and Sen. Charles Grassley (R-Iowa), as well as the "Foreign Agents Registration Amendments Act" (S. 2482) by Sens. Diane Feinstein (D-Cal.), John Cornyn (R-Texas), Jeanne Shaheen (D-NH) and Todd Young (R-Ind.), were the key legislative vehicles. Among other changes, all three measures would have repealed at least one exemption to FARA's reporting requirements.¹⁰

CONCLUSION: KEEP EXEMPTIONS NARROW AND OTHER RECOMMENDATIONS

It is important to keep in mind that the Foreign Agents Registration Act is purely a disclosure regime. FARA does not impose any limitations on lobbying activities or any other procedural constraints. Nor should it. FARA merely requires registration and disclosure of lobbying activities by agents of foreign principals.

⁸ Justin Elliott, "Lobbyists arranged NY congressman's \$20,000 trip to Taiwan," ProPublica (May 10, 2012), available at: <https://www.propublica.org/article/lobbyists-arranged-n.y.-congressmans-20000-trip-to-taiwan>

⁹ See, for example, Lee Fang and Jack Poulson, "Israel feared legal trouble over US advocacy efforts, leaked files suggest," The Guardian (Aug. 17, 2024), available at: <https://www.theguardian.com/world/article/2024/aug/17/israel-foreign-agent-law-leaked-documents>

¹⁰ HR 4170 and S. 2039 would require those who qualify as "foreign agents" to report under both FARA and LDA; while S. 2482 would require foreign agents only to report under FARA.

Of concern to active and potential registrants is the sweeping, and sometimes ambiguous, language of FARA. If read literally, the disclosure law could potentially require registration for routine transactions. The FARA Unit of the Department of Justice has produced relatively few formal regulations interpreting the law and providing public guidance for compliance. Instead, the agency has relied much more extensively on informal guidance through advisory opinions, on a case-by-case basis in response to queries, some of which are not readily available to the public. It is incumbent on the Department of Justice to provide both clearer and more formal guidelines to registrants through rulemaking.

Public Citizen applauds this most recent effort to amend and clarify FARA guidance through rulemaking. Clearly, additional improvements to the Foreign Agents Registration Act are needed through legislative action, which Public Citizen shall also pursue. At this point, Public Citizen is concerned about some elements of this rulemaking process, which are discussed below.

1. Keep the exemptions to FARA registration narrow.

The most significant recommendation by Public Citizen is for the Department of Justice to avoid loosening the statutory exemptions to FARA. These exemptions are already being exploited to varying degrees by some foreign principals and their agents seeking to evade FARA's extensive disclosure requirements. This rulemaking is focused on the commercial activities exemption.

The proposal to delete the word "directly" in the existing phrase to "directly promote" the political or public interest of a foreign government or party is a constructive narrowing of the exemption. The existing phrase raises ambiguities, suggesting that an agent may "promote" as long as it is not done directly. Removing the word "directly" is appropriate.

The proposal to apply the commercial activities exemption to noncommercial interests, such as nonprofit organizations, as well as to commercial interests is consistent with the intent of the law. The four proposed exclusions to the exemption provide useful clarity to the rule.

2. Preserve the disclosure requirement for travel in the commercial activities exemption

However, the second proposed change – exempting agents who engage in promoting "bona fide" recreational or business travel at the behest of a foreign principal when the relationship is "apparent to the public" – will expand opportunities for abuse.

First, determining what is "bona fide" is discretionary as is the phrase "apparent to the public." These terms produce more questions than answers for agents of foreign principals.

Second, recreational and business travel arranged by a foreign principal is already the subject of evasion and scandal. Cases exist of foreign governments clandestinely arranging for travel of U.S. public officials for the furtherance of political objectives. Opening the window further would invite even more apparent if not actual abuse.

Third, and to reiterate, FARA is only a disclosure regime. It does not prohibit such travel. But when travel is conducted under the direction of a foreign principal, that should be disclosed both to the recipient of the travel gift and to the public.

3. Modernize on-line records of FARA registrations and disclosures

It was not long ago that the Justice Department did not even provide an on-line database of FARA registrations and disclosures. It is commendable that this database has now been placed on-line in a searchable format.

However, the on-line format still lags behind the “searchable, sortable and downloadable” formats of on-line databases developed by the Secretary of the Senate and Clerk of the House for LDA reports as well as the on-line campaign finance database developed by the Federal Election Commission. The on-line FARA database, for example, does not allow a user to sort registrants by amount of expenditures or frequency of lobbying contacts.

Though not proposed in this rulemaking, Public Citizen nevertheless encourages the FARA Unit of the Department of Justice to take heed of the more user-friendly on-line databases of LDA and the FEC and enhance the on-line FARA database to be searchable, sortable and downloadable.

4. Urge Congress to grant the FARA Unit civil investigative demand authority

Investigations and enforcement of FARA by the Department of Justice are straddled by the FARA Unit’s lack of authority to compel answers to questions or the production of documents without taking formal legal action. This lack of civil investigative authority vastly hinders the agency’s ability to monitor compliance with the law.

Adding to the problem is the recent memorandum by the Attorney General’s office to limit the FARA Unit’s criminal probes to “instances of alleged conduct similar to more traditional espionage by foreign government actors.” The memorandum itself is out of touch with the objectives of FARA. Espionage is already illegal under separate statutes that actually prohibit the activity, not just disclose the illegal activity.

That is not what FARA is about. FARA is about permitting foreign influence in American public policy but informing officials and the public about who is behind that activity, what they seek and how much they are spending to achieve their objectives.

The memorandum imposes a considerable obstacle to the ability of the Justice Department to enforce the disclosure law and should be rescinded. Minus that, it is imperative that the FARA Unit be granted civil investigative demand authority in order to effectively follow through on its mission: to ensure transparency of foreign influence in the American policy arena.

Receiving civil investigative demand authority requires an act of Congress. Public Citizen encourages the Department of Justice once again to seek such authority from Congress for the FARA Unit, especially in light of the latest obstacle to FARA enforcement.

Sincerely,

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