

THE FOREIGN AGENTS REGISTRATION ACT (FARA) FOR NONPROFITS / TAX-EXEMPTS

FARA is a broad and vague U.S. law enacted in 1938 that is currently an enforcement priority and increasingly cited by political actors to accuse opponents of improperly acting on behalf of “foreign” interests. This document conveys basic information about FARA and identifies some specific situations when you should consult experienced legal counsel. You can also refer to www.fara.us as a resource.

What Does FARA Require? FARA requires an “agent of a foreign principal” to register and file extensive reports with the Dept. of Justice. An “agent” must also identify itself and label/file materials distributed for a “foreign principal.” FARA does not prohibit any advocacy activity.

What Is a “Foreign Principal”? “Foreign principal” includes a foreign government, foreign political party, foreign business, foreign organization, or individual outside the U.S.

What Is an “Agent of a Foreign Principal”? An “agent” is someone who does *all* of the following for or in the interests of a “foreign principal”:

- **Acts within the United States.** Note that activities performed outside the U.S. can be “within the United States” for FARA purposes if they intentionally target a U.S. audience (e.g., digital ads purchased from Europe that are intended to be seen in the U.S.).
- **Acts at the order, request, direction, or control of a foreign principal.** Practical indicators include compensation or funding, contractual obligations, governance rights, reporting and accountability requirements and practices, detailed or extensive instructions, coordination, or feedback, and other indicia of the foreign principal having power or authority over the actor.
- **Engages in FARA-registrable activity.** Registrable activity includes efforts to influence U.S. policy or public opinion, appearances before U.S. government officials, contacting U.S. media, advising on U.S. public relations activities, and soliciting or disbursing funds in the U.S. for or in the interests of a foreign principal.

Why Isn’t Everyone Engaged in Cross-Border Collaboration with Foreign Interests Registered under FARA? Even with FARA’s broad terms, those engaged in cross-border work may not need to register because they either are not acting as an “agent” or because the law contains exemptions for certain commercial, scientific, academic, religious, legal, and other activities. Generally speaking, these exemptions are more likely to be available to those collaborating with foreign interests that are not foreign governments or foreign political parties.

When Should You Consult with Experienced Legal Counsel about FARA? A FARA registration obligation may potentially arise under various circumstances, including but not limited to when you:

- Receive funds from a foreign source, especially if the funds will support U.S. activities
- Accept repeated or lavish gifts from a foreign government or political official
- Negotiate an agreement with a foreign government, political party, or organization
- Feature a foreign government or political official at an event you hold for a U.S. audience
- Collaborate with a foreign interest on an event for a U.S. audience
- Publicly disseminate materials authored by or for a foreign interest at its suggestion
- Advocate a foreign interest’s position to a U.S. government official or U.S. journalist
- Advise a foreign interest on how, when, and what to communicate to a U.S. government official, a U.S. journalist, or the public in the U.S.
- Arrange a meeting with a U.S. person for a foreign government or political official
- Solicit funds from a U.S. source that will go to a foreign government or organization

This document is not intended as legal advice. FARA is a broad and vague law with over 80 years’ worth of precedents, so you should consult experienced legal counsel if you have any questions about the law and how it specifically applies to you.