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### Who Pays Your Bills? What Foreign-Supported Nonprofits Need to Know about the Foreign Agents Registration Act

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Lost in the media frenzy surrounding the arrest of twelve Russian spies by the FBI in June 2010 was the fact that the spies were arrested – not for stealing state secrets or trading technology – but for failing to register with the U.S. Department of Justice (“DOJ”) under the Foreign Agents Registration Act (“FARA,” 22 U.S.C. § 611 *et seq.*). This statute requires U.S. persons to register when they engage in certain political or quasi-political activities on behalf of “foreign principals.” The media’s obsession with Anna “Sexy” Chapman aside, the real lesson from the recent arrests is that U.S. persons – including trade associations, charities and other nonprofits – that engage in political or quasi-political activities on behalf of foreign principals must comply with FARA or risk similar public embarrassment and possibly criminal penalties.

#### What Is the Foreign Agents Registration Act?

FARA ensures that the U.S. Government and the people of the United States are informed of the identity of foreign persons attempting to influence U.S. public opinion, policy, and laws. The statute requires persons representing foreign principals to register with DOJ for engaging in any of the following: (1) political activities, (2) public relations, (3) political consulting, (4) publicity activities, and (5) information-services. The statute defines the term “foreign principal” broadly to include foreign governments, political parties, individuals, and corporations.

Many nonprofits are surprised to learn that there is no FARA exemption for nonprofit, tax-exempt entities. Rather, FARA provides limited exemptions for raising funds for medical assistance and charity, and activities promoting *bona fide* religious, scholastic, academic, scientific pursuits, or the fine arts. In addition, FARA provides an exemption for persons registered under the Lobbying Disclosure Act of 1995 (this exemption does not apply to the representation of foreign governments or political parties).

Persons required to register must provide DOJ with information on the nature of the relationship with the foreign principal, the work to be performed for the foreign principal, and, on a semi-annual basis, submit a report of the activities performed on behalf of the foreign principal and funds received from, or disbursed on behalf of, that foreign principal. Penalties for failing to comply with FARA can include a fine of \$10,000 or imprisonment for up to five years.

#### Why Should Nonprofits Worry about FARA?

The recent arrest of the twelve Russian spies under FARA underscores that DOJ will take action against persons who fail to comply with the statute’s requirements. For example, just days after the arrest of the Russian spies, DOJ obtained a guilty plea from a former U.S. congressman who failed to register under FARA for lobbying on behalf of an Islamic charity.

The issue of nonprofits and registration under FARA has become a hot issue in the blogosphere. DOJ has apparently opened an inquiry into whether two U.S. nonprofit organizations, B’Tselem and Americans for Peace Now, have violated FARA by failing to register as foreign agents. The investigation was launched in response to information provided to FARA by a group opposed to the political positions of the two nonprofits. Similarly, there are numerous websites devoted to whether the Council on American-Islamic Relations is a foreign agent that must register under FARA. The list of websites purporting to expose foreign agents goes on and on. In each case, the FARA hook is that the nonprofits receive a substantial proportion of their operational funding from foreign sources or act at the direction of a foreign parent or government entity.

The FARA registration requirements also extend to trade and professional associations that focus

primarily on economic – as opposed to political – issues. For example, any trade association or export council that represents the interests of a foreign person or country may be subject to FARA. In this regard, several large international trade councils – such as the Korea-United States Exchange Council – are registered under FARA. There are, however, many other trade associations and export councils that appear to represent foreign interests that have not registered.

### **How to Ensure that Your Nonprofit Complies with FARA**

Determining the types of activities that trigger the need to register under FARA (or the Lobbying Disclosure Act exemption) is a challenge, made even more difficult by the dearth of DOJ guidance on the subject. To avoid the possibility of criminal sanctions or public embarrassment, U.S.-based trade and professional associations, charities, and other nonprofits that receive funding from foreign sources or that are affiliated with a foreign parent should review their operations and funding to determine whether they qualify as a foreign agent of a foreign principal under FARA. This is especially true for any nonprofit that engages in U.S. political activities or lobbying.

If registration is required, contact legal counsel for guidance on filing the required registration forms.

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