

Transcript: “Podcast: The National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act” – September 2016

Stephanie: Welcome to the latest podcast from the Department of Justice Office of the Inspector General. My name is Stephanie Logan.

Today the DOJ OIG released a new report about the Justice Department’s efforts to enforce the Foreign Agents Registration Act, commonly known as FARA.

We’ll talk later with Tom Puerzer, the OIG’s Regional Audit Manager in Philadelphia, about the details of this report. But first, I caught up with Deputy Inspector General Rob Storch and asked him about the OIG’s key findings.

Stephanie: Thanks for taking the time to speak with me today, Rob, and welcome to the podcast.

Rob: It’s my pleasure.

Stephanie: My first question is whether you could explain, briefly, what FARA is. We say in the report that FARA is, and I quote, “a disclosure statute that requires persons acting as agents of foreign principals—which includes foreign governments, political parties, and individuals—in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts, and disbursements in support of those activities.” Could you unpack that a bit?

Rob: Well essentially, FARA requires that covered individuals who engage in political or quasi-political activities on behalf of certain foreign interests disclose that fact to the Department of Justice, and to the public. This requirement applies to people who engage in activities like lobbying, tourism, or economic development on behalf of foreign governments, foreign political parties, or even foreign individuals.

Stephanie: And they have to disclose not just the relationship, but also what they’re doing for the foreign interest?

Rob: That’s right, they have to disclose what they’re doing, as well as other information, such as how much money they receive or spend. All these disclosures have to be made periodically, and a willful failure to make them can result in criminal prosecution or other penalties.

Stephanie: What’s the point of requiring these disclosures?

Rob: Well it’s basically meant to ensure that people know the source of information they receive, and in particular, when the people providing that information are acting as foreign agents.

Stephanie: And today’s report assesses the Justice Department’s administration and enforcement of those provisions.

Rob: That’s correct.

Stephanie: So what did the OIG find?

Rob: Our report made four key findings:

- First, the number of FARA registrations has declined in the last two decades, and prosecutions and other enforcement actions are rare.

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- Second, investigative agents and DOJ National Security Division officials do not appear to agree about the intent of FARA, or what constitutes a “FARA case.”
- Third, NSD needs to improve its controls and oversight over FARA registrations, particularly its efforts to ensure the timely submission of required documents and its inspections of registered foreign agents.
- And fourth, there are a number of areas where the Department should consider whether to seek administrative or legislative changes to enhance its efforts to enforce the law in this area.

All of this added up to our overall conclusion that the Justice Department lacks a comprehensive FARA enforcement strategy — and that such a strategy should be developed and integrated with the DOJ’s overall national security efforts.

Stephanie: Thanks for taking the time to speak with me today, Rob.

Rob: It’s my pleasure, Stephanie. Thank you.

Stephanie: To get a little more detail about the report’s findings, I called Tom Puerzer, the OIG’s Regional Audit Manager in our Philadelphia office, which took the lead on conducting this audit.

Tom, thanks for joining me today. Let me start by asking, why did the OIG conduct this audit?

Tom: The OIG initiated this audit in response to a requirement by Congress, and actually, the House of Representatives Committee on Appropriations, that the OIG perform a review of the Department of Justice’s enforcement of the Foreign Agent Registration Act.

Stephanie: We just heard Deputy Inspector General Rob Storch describe the primary findings from today’s report, and I was hoping I could talk with you a bit more about each of them.

The first was that the number of FARA registrations has declined in the last two decades. Could you tell us a bit more about the decline – when did it start? What could have caused it?

Tom: Well, there was a peak of 916 registrants in 1987, however, in the mid-1990s active FARA registrations began falling sharply after the imposition of fees in 1993 and the passage of the Lobbying Disclosure Act in 1995. This left a total of 360 registrants as of the end of 2014. Since the abrupt decline in the mid-1990s, registrations have continued to trend down, albeit at a more gradual pace. While no formal analysis on the decline has been performed by the Department, FARA unit staff speculated that imposition of FARA registration fees in 1993 and the passage of the LDA, or the Lobbying Disclosure Act, in 1995 were likely factors. While we did not dispute that these factors played some role in the number of declining FARA registrations, we could not definitively correlate specific causation for the declining trend.

Stephanie: The second finding in today’s report was that investigative agents and National Security Division officials do not always agree on what constitutes a FARA case – simply put, the NSD officials had a narrower view than investigators of what a true FARA case was. Can you talk about this lack of consensus and why it matters?

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Tom: Investigators we spoke to generally believe that investigations conducted regarding a separate provision, which is 18 US Code 951, were FARA cases. Whereas National Security Division officials believe that section 951 and FARA were intended to address two different criminal activities. Specifically, the National Security Division described section 951 as targeting information gathering and other espionage-like activities on behalf of a foreign government, whereas FARA requires registration and disclosures by foreign agents engaged in legal activities such as lobbying, tourism, and economic development. We believe these differing understandings are indicative of the lack of a comprehensive Department of Justice enforcement strategy on FARA. And investigators also expressed frustration about a perceived reluctance by National Security Division officials to approve FARA cases for prosecution. A criticism that National Security Division officials deny, while simultaneously acknowledging that they need to improve communication with investigators about the reasons for the approval decisions that they make.

Stephanie: The third finding of the report is that NSD needs to improve its controls and oversight of FARA registrations – can you tell us what is behind that finding?

Tom: We found that within our judgmentally selected, risk based sample, 62 percent of initial registrations were untimely, and that 50 percent of registrants filed at least one supplemental statement late. We also found that several inspection recommendations issued by the National Security Division’s FARA unit remained unresolved, and we believe that the National Security Division can further improve its monitoring efforts by developing a policy to ensure appropriate resolution of recommendations identified in its inspection reports.

Stephanie: The final key finding of the report is that NSD has developed several proposals for legislative changes to FARA that could improve its enforcement efforts. What are these legislative changes?

Tom: National Security Division officials told us that they cannot compel the production of information from persons who may be agents, and therefore, the National Security Division is interested in pursuing civil investigative demand authority from Congress to help enhance their ability to assess the need for potential agents to register. While we agree that this demand authority, or CID, could be a useful tool for the National Security Division, there are important competing considerations at stake, and we believe that any expansion of such authority must also include appropriate controls and oversight to ensure it is used appropriately.

Stephanie: Thanks so much, Tom.

That’s all for today. Thanks to Rob and Tom for taking the time to talk. For listeners who would like more information, you can read the full report at our website at oig.justice.gov under the reports section. Thanks for tuning in.

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