

FOREIGN AGENTS REGISTRATION ACT

The Foreign Agents Registration Act (FARA) is a 1938 U.S. law designed to limit the influence of foreign governments and foreign “propaganda” in the United States. The law requires “agents,” or those promoting the interests of a foreign power or “foreign principal,” to disclose such relationships and any activities or funding related to promoting said interests.²²¹ Since the end of the Cold War, the U.S. government has rarely enforced FARA. The 2016 elections and accusations of Russian meddling has renewed policymakers’ attention toward FARA as a means to counter disinformation and illicit intervention by foreign nationals in election processes. During the 115th Congress, legislators introduced over a dozen bills seeking to increase enforcement of the Act and capacity to investigate potential violations.²²²

What are the Impacts on Nonprofits?

As written, FARA is unsuitable for our contemporary world – a world in which global interconnectivity is increasing and the roles of state and nonstate actors are blurring. FARA’s broad definition of “foreign principal” currently includes not just foreign governments, but foreign individuals, foundations, nonprofits, companies, or other entities. Under the Act, one can become an “agent” of a foreign principal not just by acting under a foreign principal’s “direction or control,” but simply at their “request.” Such broad language could, in theory, require nonprofits delivering assistance to register as foreign agents with the U.S. government if they are funded in part by a foreign foundation or government, or their headquarters is based abroad. Many operate as neutral actors, including in war torn and repressive environments, and relationships with foreign actors are commonplace. For safety and security reasons, nonprofits maintain neutrality so they have access to those in need. Registering as a foreign agent in the U.S. or elsewhere removes this neutrality and could enable hostile actors to target nonprofits, which would put their staff at unnecessary risk.

During the 115th Congress, some members of Congress targeted nonprofits for their legitimate overseas advocacy FARA’s and its loose definitions.²²³ They arguably targeted these nonprofits, in part, because these nonprofits had different political views. Overseas, repressive regimes have legitimated the restrictive laws they use to crackdown on civil society pointing to FARA in the U.S.

What Can We Do?

Support for civil society is increasingly important as we recognize that nonstate actors have gained a significant presence on the world stage in recent decades. We encourage Congress to hold hearings, allow for debate, and engage nonprofit stakeholders as we believe that any con-

gressional pursuit to reform FARA, including increased enforcement, should be comprehensive and modernize the law to reflect an interconnected world where funding, ideas, assistance, and cooperation aren’t defined, contained, or restricted by borders.

In particular, many implementing partners feel that FARA should be modernized so that it:

- better recognizes the existence of international relationships among nonstate actors, including providing exemptions for those organizations from registering as foreign “agents” in the U.S. who work with support from foreigners for development and humanitarian assistance;
- encourages relationships between nonprofits and foreign government support for a nonprofit’s independent activity; and
- upholds and supports constitutional freedoms such as freedom of speech and the right to petition while protecting nonprofits from those who would use the Act to prosecute nonprofits, expel them from countries, or otherwise undermine their ability to carry out their work.

Key Legislation and Reports:

Foreign Influence Transparency Act

Legislation introduced in 2018 that seeks to limit current exemptions for registration from the Foreign Agents Registration Act.²²⁴

Repelling Encroachment by Foreigners into U.S. Elections (REFUSE) Act

Legislation introduced in 2018 that seeks to reform the procedures for the registration of agents of foreign principals under the FARA.²²⁵

Disclosing Foreign Influence Act

Legislation introduced in 2017 that seeks to promote greater transparency in the registration and increase investigative powers for the Attorney General.²²⁶

Audit of the National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act

Examines shortcomings and limitations inhibiting investigation and enforcement of FARA by the U.S. Department of Justice.²²⁷

Resources for Congressional Staff

- **An Open Letter to Congress Concerning Foreign Agents Registration Act.** *InterAction, April 2018.* A letter signed by 45 InterAction members and partners highlighting concerns with FARA.²²⁸
- **The Foreign Agents Registration Act (FARA): A Legal Overview.** *Congressional Research Service, December 2017.* A comprehensive background on law including definitions of terms and registration requirements.²²⁹
- **Foreign Lobbying Overhauls Stall as Manafort Goes to Trial.** *Roll Call, July 2018.* An article highlighting the need for comprehensive reform to avoid continued politicization of the law.²³⁰