



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

Be sure you're not risking fines and jail time.

By D. E. Wilson, Jr. & Andrew E. Bigart

Lost in the media frenzy surrounding the arrest of 12 Russian spies by the FBI in June 2010 was the fact that the spies were arrested not for stealing state secrets but for failing to register with the U.S. Department of Justice (DOJ) under the Foreign Agents Registration Act (FARA). This act requires U.S. people and organizations that receive funding from foreign sources or are affiliated with a foreign group to register with the DOJ if they engage in any of the following: (1) political activities; (2) public relations; (3) political consulting; (4) publicity activities; and (5) information services.

Many nonprofits are surprised to learn that there's no 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, or scientific pursuits or of the fine arts. In addition, FARA provides an exemption for those registered under the Lobbying Disclosure Act of 1995.

Anyone required to register must, 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 can include a fine of \$10,000 or imprisonment up to five years.

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Why Should Nonprofits Worry about FARA?

The arrest of the 12 Russian spies underscores that DOJ will take action against those who fail to comply with FARA'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 topic 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. The list of Web sites purporting to expose nonprofits as 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.

How to Ensure that You Comply with FARA

Determining 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 nonprofits that receive funding from foreign sources or are affiliated with a foreign group should review their operations 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. lobbying or political activities. If registration is required, consult legal counsel for guidance on preparing and filing the required forms. ■

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