



# Department of Justice

---

**STATEMENT OF**

**ADAM S. HICKEY  
DEPUTY ASSISTANT ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**FOR A HEARING ENTITLED  
“OVERSIGHT OF THE FOREIGN AGENTS REGISTRATION ACT AND  
ATTEMPTS TO INFLUENCE U.S. ELECTIONS: LESSONS LEARNED  
FROM CURRENT AND PRIOR ADMINISTRATIONS”**

**PRESENTED**

**JULY 26, 2017**

**Statement of  
Adam S. Hickey  
Deputy Assistant Attorney General  
Department of Justice**

**Before the  
Committee on the Judiciary  
United States Senate**

**At a Hearing Entitled  
“Oversight of the Foreign Agents Registration Act and Attempts to Influence  
U.S. Elections: Lessons Learned from Current and Prior Administrations”**

**July 26, 2017**

Good afternoon Chairman Grassley, Ranking Member Feinstein, and distinguished Members of the Committee. Thank you for providing me the opportunity to testify on behalf of the Department of Justice concerning the Foreign Agents Registration Act of 1938, 22 U.S.C. § 611 et seq. (“FARA”). The Department appreciates the Committee’s interest in FARA.

I hope this testimony will enhance the Committee’s understanding of FARA and how the Department enforces it. I will cover three areas in my testimony. First, I will provide an overview of the law and its background. Second, I will discuss how the Department administers and enforces the Act and challenges to our enforcement efforts. Third, I will address how the Department has responded to the findings in the September 2016 report on FARA by the Department of Justice’s Office of Inspector General.

**I. Overview of FARA and its Background and Purpose**

FARA is a disclosure statute that requires persons in the United States who engage in specified activities as agents of foreign principals to register with the Department’s FARA Unit and to file periodic public disclosures thereafter. The filings must disclose the agent’s relationship with the foreign principal and activities by the agent within the United States on behalf of that foreign principal. The Act’s purpose is to ensure that the American public and our lawmakers know the source of information that is provided at the behest of a foreign principal, where that information may be intended to influence U.S. public opinion, policy, and laws. The statute enhances the public’s and the government’s ability to evaluate such information.

FARA was enacted in 1938 in response to recommendations of a special congressional committee that investigated the rise of propaganda by European fascist and communist governments. The committee found that the Nazi government had established an extensive, underground propaganda apparatus inside the United States using American firms and citizens. Based on these findings, the House Judiciary Committee recommended a law that would (in the

committee's words) throw these activities under the "spotlight of pitiless publicity."<sup>1</sup> The judiciary committee recommended that Congress impose reporting requirements that would "make available to the American public the sources that promote and pay for the spread of such foreign propaganda."<sup>2</sup>

Until 1966, FARA focused on propagandists acting on behalf of foreign principals. Beginning in 1962, led by Senator J. William Fulbright, Congress began to consider how to respond to increasing attempts by foreign governments and their agents to influence decisions regarding U.S. foreign policy by lobbying and appealing to the public. The 1966 amendments to FARA expanded the focus of the statute from propaganda to protecting the integrity of the U.S. Government's decision-making process.

The next round of significant amendments to FARA occurred in 1995 and 1998 in conjunction with passage of the Lobbying Disclosure Act of 1995 ("LDA") and the Lobbying Disclosure Technical Amendments Act of 1998. These amendments exempt lobbyists for foreign commercial interests (as opposed to foreign governmental or foreign political party interests) from registering under FARA if they register under the LDA.

FARA includes the following key requirements and provisions: (1) it defines who must register with the Department as a foreign agent; (2) it specifies how such agents must register and report their activities to the Department; (3) it exempts certain types of foreign agents from the registration requirements; (4) it imposes specific filing and labeling requirements for political literature disseminated by registered agents; (5) it requires all registered agents to preserve books of account and other records on all their activities and to make these records available for inspection by the Department officials responsible for enforcing the Act; and (6) it provides for public examination of all agents' registration statements, reports, and informational materials filed with the Department.

FARA is designed to encourage transparency by foreign principals attempting to influence the U.S. government or public through public speech, political activities, and lobbying through agents in the United States, not to discourage that conduct itself. In this respect, it differs from a provision of the criminal code that has a similar name but a different purpose: Section 951 of Title 18, United States Code, "Agents of foreign governments," is used to prosecute clandestine, espionage-like behavior, information gathering, and procurement of technology on behalf of foreign governments or officials. Although Section 951 requires notification to the Attorney General, the statute is designed to deter and punish wrongful conduct (namely, engaging in clandestine conduct on behalf of a foreign power). Consistent with that focus, the only parties to provide notification under it are those foreign government employees

---

<sup>1</sup>H.R. REP. NO. 75-1381, at 2 (1937).

<sup>2</sup>*Id.*, at 2-3.

who are engaged in lawful, official business in the United States,<sup>3</sup> and Section 951 is codified in Title 18 of the U.S. Code (designated for “Crimes and Criminal Procedure”), while FARA is codified in Title 22 (designated for “Foreign Relations”).

Although FARA authorizes criminal penalties for willful violations, as well as limited administrative and judicial enforcement procedures, the primary means of achieving FARA’s main purpose of transparency is through encouraging voluntary disclosure in compliance with the Act. Occasionally, however, the mistaken conflation of the two statutes has led some to overemphasize criminal prosecution as the measure of FARA enforcement (or even to refer mistakenly to Section 951 as “FARA”) and to overlook the significance of administrative enforcement efforts relating to the FARA registration regime.

Of course, the Department will approve criminal prosecutions under FARA if there is sufficient, admissible evidence of a willful violation of the statute and the standards set forth in the U.S. Attorney’s Manual, applicable to all federal criminal prosecutions, are otherwise satisfied.<sup>4</sup> But the high burden of proving willfulness, difficulties in proving “direction or control” by a foreign principal, and exemptions available under the statute make criminal prosecution for FARA violations challenging. Despite these challenges, however, the Department has brought four FARA criminal cases since 2007, all of which resulted in convictions.<sup>5</sup>

---

<sup>3</sup>Pursuant to the Department’s implementing regulations, those officials satisfy the statute through notifications in operational channels to INTERPOL, the FBI, or the Criminal Division (as opposed to the Office of the Attorney General through NSD). *See* 28 C.F.R. § 73.3.

<sup>4</sup>U.S. Attorneys’ Manual, § 9-27.001, <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.001>.

<sup>5</sup>Since 2007, the Department has charged the following FARA or FARA-related cases, all of which resulted in a conviction or guilty plea:

- In 2007, Tongsun Park was convicted at trial in the Southern District of New York for conspiracy to violate FARA, 18 U.S.C. § 951 (acting as an agent of a foreign government without prior notice to the Attorney General), and money laundering in connection with a scheme to lobby for easing United States and United Nations sanctions on Iraq and to corruptly influence the award and conditions of Oil for Food contracts. Park was sentenced to 60 months imprisonment.
- In 2010, former U.S. Representative Mark Deli Siljander pleaded guilty in the District of Missouri to obstruction of justice and to acting as an unregistered foreign agent, relating to his work for the Islamic American Relief Agency (“IARA”), an Islamic charity with ties to international terrorism. His co-defendant Abdel Azim El-Siddig also pleaded guilty to conspiring with Siljander and others to hire Siljander to lobby for IARA’s removal from a Senate Finance Committee list of charities suspected of having terrorist ties, while concealing this advocacy and not registering. Siljander was sentenced to one

## II. The Department's Administration of FARA

Day-to-day administration and enforcement of FARA is handled by the DOJ National Security Division's ("NSD's") FARA Unit. The FARA Unit staff focuses on identifying foreign agents with an obligation to register and achieving compliance with the Act's provisions. Actions undertaken by FARA Unit staff to further these goals include: combing open source information for prospective registrants; reviewing registration materials submitted by existing registrants and inspecting registrants' books and records for information pertaining to registration obligations for other entities and individuals; analyzing referrals or information provided by other government agencies or offices; and reviewing information obtained from the public. Based on that work, FARA Unit staff draft and issue letters to individuals or entities they identify who may have an obligation to register.

In those letters, they outline the information potentially giving rise to an obligation to register and seek information to make a determination regarding that obligation. They analyze the responses to those letters and continue to research public information to assess whether a registration obligation does in fact exist. The letters sent by the FARA Unit frequently result in the filing of registrations by the individuals or entities, thus achieving FARA's goal of transparency. Once a registration is on file, FARA Unit staff carefully reviews registration filings for deficiencies, seeks amendments to correct those deficiencies, and conducts inspections (and follow-up inspections) to ensure continued compliance. FARA Unit staff also provides advisory opinions regarding the application and requirements of the Act.

In addition to activities devoted to administrative enforcement of the Act, FARA Unit staff produce and process a significant volume of registration forms and associated filing fees; provide support, guidance, and assistance to registrants, potential registrants, their attorneys, and other government agencies concerning FARA issues; produce a semi-annual report to Congress; maintain a public office reading room; process a high volume of database searches for the FBI, Department of Homeland Security, Congress, and other government agencies; handle frequent media inquiries; and assist numerous members of the public with registration and search guidance through in-person meetings, e-mail exchanges, and telephone inquiries. They perform

---

year and one day in federal prison without parole. El-Siddig received two years' probation.

- In 2011, Syed Ghulam Nabi Fai, director of the NGO Kashmiri American Council, was charged in the Eastern District of Virginia with conspiring to act as an agent of the government of Pakistan without registering as an agent under FARA. The FARA charge subsequently was dropped as part of a plea agreement.
- In 2014, Prince Asiel Ben Israel pleaded guilty in the Northern District of Illinois for failing to register under FARA as an agent for a foreign government and for attempting to persuade U.S. government officials to push for the lifting of the sanctions imposed in 2003 on Zimbabwean President Robert Mugabe and other top Zimbabwean government officials. Ben Israel was sentenced to seven months in prison.

all of these duties while maintaining and enhancing the FARA e-File system and database and while providing extensive customer service to users of the system.

When a foreign agent registers under FARA, the FARA Unit staff ensures that the agent's filings and disclosures comply with the Act. The FARA Unit will determine whether the registration statement is complete and whether it otherwise complies with the statute and regulations. Often, the FARA Unit will request that a filer amend the registration statement to comply with FARA's requirements.

Throughout the year, the FARA Unit conducts inspections of certain registrants' books and records, as authorized by the Act, to determine whether the registrant is complying with the Act's disclosure requirements. The Unit chooses inspection candidates based on multiple factors, including (1) deficiencies or abnormalities uncovered in the Unit's review of a registration statement; (2) delinquent filings; and (3) suspected undisclosed political activities of the registrant or individuals associated with the registrant. Other inspections are conducted randomly. Such an inspection usually covers a two- to three-year period. The FARA Unit will review all files relating to the registrant's covered activities, including accounting records, e-mail, invoices, receipts, and other correspondence. If the FARA Unit identifies deficiencies, it sends a letter to the registrant detailing the deficiencies and advising how the deficiencies should be corrected.

A regular part of the FARA Unit's work involves attempting to identify persons who may be subject to FARA but have not registered. The FARA Unit relies on publicly available information and referrals or information provided by other government offices. If credible information suggests that the individual likely must register under FARA, the FARA Unit will send the individual a letter advising them of the possible registration obligation and requesting a response. If the individual does not respond, or the response seems incomplete or untruthful, the FARA Unit may follow up with additional correspondence. In some instances, NSD may decide that a criminal investigation is appropriate and involve the FBI, which is responsible for conducting FARA criminal investigations. In making these decisions, NSD follows the same Principles of Federal Prosecution that promote the Department's "fair, evenhanded administration of the federal criminal laws."<sup>6</sup>

---

<sup>6</sup>U.S. Attorneys' Manual, § 9-27.001, <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.001>; *see also id.* § 9-27.260 ("In determining whether to commence or recommend prosecution or take other action against a person, the attorney for the government should not be improperly influenced by . . . [t]he person's race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs . . ."), <https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution#9-27.260>.

### III. 2016 Report by the Department of Justice Office of Inspector General

I will now address how NSD has responded to the September 2016 report of the Department of Justice Office of the Inspector General (“OIG”) addressing FARA. That report was prepared at the request of the Committee on Appropriations of the House of Representatives. The Committee tasked the OIG to recommend administrative or legislative options for the improvement of FARA enforcement.<sup>7</sup>

The OIG report made fourteen recommendations. NSD agreed with all of the recommendations, has implemented most of them, and is working to implement the few that remain. As a result, in February 2017, the OIG informed NSD that six of the recommendations were closed. NSD plans to file its next progress report in August, at which time we anticipate that the OIG will be in a position to close nearly all of their remaining recommendations. An appendix to my testimony provides details on each of the OIG recommendations and how NSD has implemented them, but in my testimony today, I would like to summarize a few of the conclusions in the OIG report and how NSD has addressed them.

First, parts of the OIG report state that the Department lacks a mutual statutory understanding and clarity in enforcement goals, as well as a comprehensive enforcement strategy. The report also noted the perception of many FBI agents that NSD is slow to review and reluctant to approve what they believe to be FARA cases. Those concerns are addressed in recommendations two through six of the OIG report. As set out in the attached appendix, NSD agreed with each of the recommendations and is implementing them. The Department believes that some of these criticisms in the report, however, may stem from confusion in the law enforcement community between FARA and Section 951. For example, the report notes that the limited number of FARA criminal prosecutions suggests that the Department is failing to use FARA as a counterintelligence tool. But as I have explained previously, FARA is designed to promote disclosure, rather than to proscribe conduct, and although it contains a criminal penalty for certain willful conduct, the statute’s focal point is an administrative reporting regime aimed at a wide range of lobbyists and representatives of foreign interests engaged in otherwise legal activity in the United States. By contrast, Section 951 is designed to punish and deter criminal, espionage-like behavior, and the Department uses Section 951 to reach serious criminal conduct such as espionage-like activities (*e.g.*, the Russian “Illegals” prosecution<sup>8</sup>) or acting as a procurement agent for foreign governments in order to evade U.S. export controls or sanctions. The statutes thus serve different purposes, and the Department accordingly uses them in different ways.

---

<sup>7</sup>H.R. REP. NO. 113-448, at 43 (2014).

<sup>8</sup>*See* Criminal Complaints and Press Release, U.S. Dep’t of Justice, Ten Alleged Secret Agents Arrested in the United States (June 28, 2010), <https://www.justice.gov/opa/pr/ten-alleged-secret-agents-arrested-united-states>; <https://www.justice.gov/sites/default/files/opa/legacy/2010/06/28/062810complaint1.pdf>; <https://www.justice.gov/sites/default/files/opa/legacy/2010/06/28/062810complaint2.pdf>.

Second, the report discusses late registration filings. The Department recognizes the importance of ensuring timely filings. Indeed, the Department previously offered legislation that would impose fines for late filings. But although we take seriously the requirement to make timely filings, it is important to place the concern in context. Well over half of the filings categorized as late in the OIG report were filed within 30 days after the filing deadline. For some, the FARA Unit provided the registrant an extension after assessing that a request for an extension was justified.

Finally, although the OIG noted that the Department has not sought injunctive relief under FARA since 1991, the report recognizes that the Department can seek injunctive relief to compel compliance with FARA only where we already possess sufficient evidence that an individual is subject to FARA's requirements. Moreover, as a matter of practice, the Department first tries to get an individual to register or remedy delinquent filings voluntarily, since such compliance can obviate the need for litigation.

\*\*\*

I want to thank the Committee again for providing me this opportunity to discuss these important issues on behalf of the Department. I am happy to answer any questions you may have.



## **APPENDIX A: NATIONAL SECURITY DIVISION RESPONSES TO THE REPORT OF THE DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL**

### **OIG Recommendation #1: “Consider the value of making FARA advisory opinions publicly available as an information resource.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated that by March 31, 2017, it would review its policy and practices regarding FARA advisory opinions and determine how to expand public accessibility. OIG wrote, “This recommendation can be closed when we receive evidence that this review was conducted and of the actions taken as a result of the review.”

Status: Closed by the OIG.

NSD considered the value of making FARA advisory opinions publicly available as an information resource. For the reasons set forth below, NSD will make summaries of selected advisory opinions available on the FARA website, and it has already begun the process of doing so.

The Department is obligated to treat requests for advisory opinions in a confidential manner. The FARA regulation set forth in 28 C.F.R. § 5.2(m) provides that any written material submitted to the Department pursuant to a request for an advisory opinion shall be treated as confidential and exempt from disclosure. Further, NSD considers advisory opinions to be among its investigative tools and, consistent with longstanding Department practice, we can neither confirm nor deny the existence of non-public investigations. In situations where NSD receives a FOIA request for advisory opinion letters, NSD will release advisory opinion letters only with respect to individuals and entities that subsequently registered with FARA (redacting information where appropriate). To provide the public with access to full advisory opinion letters sent to persons we ultimately determined had no obligation to register under FARA would compromise the privacy of potential registrants in instances where there is no overarching requirement for public disclosure. We believe that disclosure in that situation would not be appropriate and would result in discouraging outreach by potential registrants seeking to understand their obligations. Further, publicly releasing full FARA advisory opinions would work against achieving a greater number of registrations overall, since potential registrants seeking guidance from the FARA Unit may avoid seeking an advisory opinion for fear of being revealed in the public domain.

The initial summaries of some FARA advisory opinions are now posted on the FARA website. As appropriate, the website will be updated periodically with additional summaries of advisory opinions. Releasing advisory opinions in this matter will provide an information

resource to those seeking guidance regarding registration under FARA. Accordingly, OIG confirmed in its February 10, 2017 memorandum that this recommendation is now closed.<sup>1</sup>

**OIG Recommendation #2: “Update its current training for investigators and prosecutors to include information about the time it takes and the process used by NSD to approve or deny these types of cases for prosecution.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it would continue to update its FARA training for investigators and prosecutors, to include information about the time it takes and the process used by NSD to approve or deny FARA cases. OIG wrote, “This recommendation can be closed when we receive evidence that the relevant training was updated and provided to prosecutors and agents.”

Status: Closed by the OIG.

NSD has updated its training for investigators and prosecutors to include information about the time it takes and the process used by NSD to approve or deny these types of cases for prosecution through addition of information to training modules. All organizations can benefit from improved communication and NSD is committed to continually improving its communication with the FBI and USAOs. NSD included a session on FARA as part of its course at the National Advocacy Center, a National Security Seminar on Export Control, Counterproliferation, and Counterintelligence, which was held in March 2017. Recent training sessions with a Criminal Division section and an FBI counterintelligence unit included a discussion of the timeframe for approval for FARA charges, the process used by NSD to approve or deny matters for prosecution, and the differences between FARA and 18 U.S.C. § 951. In addition, the FARA Unit has recently formally updated its presentation materials to include a discussion of the time and process for approvals. Accordingly, OIG confirmed in its February 10, 2017 memorandum that this recommendation is now closed.<sup>2</sup>

**OIG Recommendation #3: “Explore with the FBI the feasibility of distinct classification codes for FARA and Section 951 in its record keeping system.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD noted that, to its understanding, the FBI already has distinct classification codes for these statutes. However, NSD also acknowledged possible confusion and commingling of those codes. OIG noted that it asked FBI officials about its classification codes for FARA cases both during the audit and subsequent to the issuance of the draft report to NSD and were told by the FBI that both statutes are recorded under a single FARA code. NSD stated it intended to meet with FBI prior to September 30, 2016, to explore resolution of this issue. OIG wrote, “This

---

<sup>1</sup>Memorandum from Thomas O. Puerzer, Regional Audit Manager, Philadelphia Regional Audit Office, Department of Justice, Office of Inspector General, to Mary B. McCord, Acting Assistant Attorney General for National Security (Feb. 10, 2017).

<sup>2</sup>*Id.*

recommendation can be closed when we receive evidence that NSD explored with the FBI the feasibility of distinct classification codes in its record keeping system.”

Status: Closed by the OIG.

NSD explored with the FBI the feasibility of distinct classification codes for FARA and Section 951 in its record keeping system. On September 28, 2016, several DOJ officials met with FBI personnel to discuss the OIG Audit, specifically as it pertains to the FBI coding practices referenced in Recommendation #3 of the OIG Report. The meeting began with a general overview and findings of the OIG Report, with specific emphasis on the FBI coding practices relating to FARA. NSD informed the FBI of the erroneous practice of describing all cases under 22 U.S.C. § 611 and 18 U.S.C. § 951 as “FARA Cases,” and proceeded to discuss ways to correct the confusion. The FBI agreed that there is a distinct code for FARA cases but that there is not a distinct code for Section 951 cases. They agreed to review their current coding practices with the intention to categorize Section 951 cases as matters separate from FARA. All those present at the meeting agreed that additional training will help clear up the confusion. The FBI agreed to engage the FARA Registration Unit in training meetings at the regional and national levels, including at all-hands headquarters meetings and at the FBI regional training conferences. Accordingly, OIG confirmed in its February 10, 2017 memorandum that this recommendation is now closed.<sup>3</sup>

**OIG Recommendation #4: “Develop a comprehensive strategy for the enforcement and administration of FARA that includes the agencies that perform FARA investigations and prosecutions and that is integrated with the Department’s overall national security efforts.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated that it has conducted an internal assessment of FARA enforcement and administration and has begun implementing strategies resulting from that assessment. NSD’s response stated that FARA fits into the Department’s overall national security efforts by promoting the detection of, discouraging, and neutralizing undisclosed foreign messaging, and forcing disclosure of foreign efforts to influence United States foreign and domestic policy and public opinion. NSD’s comprehensive strategy will include updates to FARA training materials to provide helpful information regarding NSD’s evaluation of FARA criminal charges. OIG wrote, “This recommendation can be closed when we receive evidence of a completed comprehensive strategy that includes the agencies that perform FARA investigations and prosecutions and is integrated with the Department’s overall national security efforts.”

Status: Resolved by the OIG; NSD anticipates it will be closed by the OIG in the upcoming months.

---

<sup>3</sup>*Id.*

NSD is actively implementing a strategy for the administration and enforcement of the Foreign Agents Registration Act and is in the process of assembling a document that sets forth the components of that comprehensive strategy. FARA has been an integral part of DOJ's counterintelligence strategy since its inception in 1938. As noted in its response to the OIG, NSD conducted a strategic assessment of FARA enforcement and administration in March 2015 and took steps to insure FARA's effective continued implementation as an important part of NSD's overall national security strategy. Also as noted in its response, FARA is an integral part of NSD's "all tools" strategy to protecting the national security by exposing the otherwise hidden role of foreign governments in communications aimed at influencing the American public or U.S. Government officials. The FARA Unit of the Department's [Counterintelligence and Export Control Section](#) ("CES") makes robust use of its existing authorities to engage in fact-finding to determine whether individuals and entities have an obligation to register under the Act. Additionally, the FARA Unit, as part of its training program, ensures that prosecutors and the FBI understand the role that FARA plays as part of their national security efforts, and what is necessary to establish a criminal violation of FARA. As further evidence of FARA's role in NSD's comprehensive national security strategy, the FARA Unit and other CES prosecutors meet regularly with the FBI, U.S. Attorneys' offices, and members of the intelligence community to assess FARA leads, matters, and cases. In addition, NSD actively seeks leads from counterintelligence investigations, and continues to engage in outreach to other government agencies that might have sources of information pertinent to the administration and enforcement of FARA. In recent months, NSD has communicated on FARA-related matters with several agencies and components, including the Department of Justice Criminal Division, FBI counterintelligence units, the Department of State, and CIA Open Source Enterprise. Accordingly, NSD believes this recommendation can be closed once a strategy document is finalized, which we anticipate will occur shortly.

**OIG Recommendation #5: "Ensure that it timely informs investigators and prosecutors regarding the reasons for decisions not to approve FARA prosecutions."**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it has taken steps to ensure that it timely informs investigators and prosecutors in individual cases regarding the reasons for FARA decisions. NSD added that it intends to update training materials to provide helpful information regarding evaluation of FARA charges. OIG wrote, "This recommendation can be closed when we receive evidence of the steps described and of the updated training materials."

Status: Closed by the OIG.

It is standard practice for NSD prosecutors to timely inform the FBI and the appropriate U.S. Attorney's Office in the event of a decision to decline criminal prosecution in a FARA investigation, and to share NSD's reasoning for such a decision. It is also standard practice to document communications with agents and prosecutors regarding any decision to decline

prosecution. Meanwhile, NSD has updated its training materials to enhance understanding by agents and prosecutors regarding the applicable legal standards and requisite proof to establish a criminal violation of FARA. Accordingly, OIG confirmed, in its February 10, 2017 memorandum that this recommendation is now closed.<sup>4</sup>

**OIG Recommendation #6: “Establish a comprehensive system for tracking the FARA cases received for review, including whether cases are approved for further criminal or civil action, and the timeline for approval or denial.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it intends to address this recommendation by addressing classification coding with FBI as described in recommendation #3 above, and by improvements to NSD’s case tracking system to ensure ready identification of FARA matters, to include dates of receipt, action, and approval of FARA matters. Case tracking improvements have taken place in 2016 and are anticipated to take place during the remainder of 2017. OIG wrote, “This recommendation can be closed when we receive evidence of the classification code resolution with FBI, and of a case tracking system that includes information about approval for further criminal or civil action, and the timeline for approval or denial.”

Status: NSD believes this recommendation should be closed and will make such a recommendation in its next status report to the OIG.

A comprehensive system for tracking FARA cases was included in the CES version of NSD’s case management system. A category for FARA is included in the drop-down menu for entering new matters into the system. This ensures that FARA cases received for review are separately tracked. CES management and the FARA Unit met with the FBI in September 2016 to emphasize the importance of separate classification coding for investigations of FARA and 18 U.S.C. § 951. The NSD case tracking system tracks when FARA cases are received, the approval or denial process, and the decision whether to approve or deny. This tool was released on May 4, 2017. Accordingly, NSD believes this recommendation can be closed.

**OIG Recommendation #7: “Complete its effort to standardize a system for batching and sending registration delinquency notices at regular intervals, and develop policy and procedures that ensure appropriate follow up on them.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated that in the past year it has standardized a system for batching and sending registration delinquency notices at regular intervals. NSD also noted that it is currently in the process of expanding the system, which it anticipates completing by September 30, 2017. Additionally, NSD stated that it is committed to developing policy and procedures that ensure appropriate follow-up.

---

<sup>4</sup>*Id.*

NSD stated that upon completion of the delinquency notice system, it will ensure FARA Unit staff adequately and efficiently track compliance and take appropriate measures to address delinquency. OIG wrote, “This recommendation can be closed when we receive evidence of the completion and implementation of the delinquency notice system, and policy and procedures to ensure appropriate follow-up.”

Status: NSD believes this recommendation should be closed and will make such a recommendation in its next status report to the OIG.

Prior to the OIG Audit, NSD developed a policy and procedure to update its internal database in an effort to standardize its system for batching and sending registration delinquency notices at regular intervals. The delinquent supplemental statement tracking feature is now fully functional, allowing the FARA Registration Unit to identify delinquent registrants and track the process of resolving each delinquency. A report is generated that identifies which registrants are delinquent, and the Unit uses the report to launch a tracking workflow for each specific registrant. The tracking workflow provides the Unit with a tool for documenting correspondence with the delinquent registrant, successful resolution of the delinquency, and escalation when a delinquency is not successfully resolved. This system became operational on April 7, 2017. Accordingly, NSD believes this recommendation can be closed.

**OIG Recommendation #8: “Develop a policy and tracking system that ensures that registration files are timely closed and that when agents cease meeting their supplemental filing obligations for an extended period of time an appropriate investigation is conducted.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it intends to address this recommendation through the development of the delinquency notice system described in recommendation 7 above, which will help identify candidates for termination, and through the development of policy to ensure registration files are timely closed and appropriate actions are taken when obligations are not met for an extended period of time. NSD anticipates this policy will be developed by March 31, 2017. OIG wrote, “This recommendation can be closed when we receive evidence of the completion and implementation of the delinquency notice system, a policy is implemented to ensure registration files are timely closed, and appropriate actions are taken when obligations are not met for an extended period of time.”

Status: NSD believes this recommendation should be closed and will make such a recommendation in its next status report to the OIG.

Prior to the OIG Audit, NSD developed a policy and procedure to update its internal database in an effort to standardize its system for batching and sending registration delinquency notices at regular intervals. This system will help identify candidates for termination and help ensure registration files are timely closed or that appropriate actions are taken when

obligations are not met for an extended period of time. This system became operational on April 7, 2017. Accordingly, NSD believes this recommendation can be closed.

**OIG Recommendation #9: “Consider expanding the sources of information beyond those currently used by the FARA Unit to help identify potential or delinquent foreign agents, currently limited to open source internet and Lexis-Nexis searches.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it has already engaged in outreach to other government agencies that might have such sources of information. NSD stated it will continue to pursue that outreach on an ongoing basis, and additionally will work to identify additional sources of information. OIG wrote, “This recommendation can be closed when we receive evidence of such outreach and identification.”

Status: Closed by the OIG.

NSD actively seeks leads from counterintelligence investigations and continues to engage in outreach to other government agencies that might have sources of information. In recent months, NSD has communicated on FARA-related matters with several agencies and components, including the Department of Justice Criminal Division, FBI counterintelligence units, the Department of State, and CIA Open Source Enterprise. Accordingly, OIG confirmed, in its February 10, 2017 memorandum that this recommendation is now closed.<sup>5</sup>

**OIG Recommendation #10: “Either take steps to improve the compliance rates for the filing of informational materials to achieve the purposes of the Act or, if the Unit considers the current 48-hour standard unreasonable, pursue appropriate modifications.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD determined the 48-hour standard is out of date and unreasonable. NSD has drafted appropriate modifications to address the issue, which are under review within the Office of Management and Budget. OIG wrote, “This recommendation can be closed when we receive evidence of the modifications or steps taken to improve the compliance rates for the filing of informational materials.”

Status: Closed by the OIG.

The Department of Justice forwarded to the Office of Management and Budget on October 1, 2016 legislation drafted by NSD to address the current 48-hour standard for the filing of informational materials. The proposed legislation addresses the unreasonable 48-hour standard by striking reference in the statute to the 48-hour standard and replacing it with language requiring registrants to “file a copy of such informational materials in a manner as

---

<sup>5</sup>*Id.*

prescribed by the Attorney General through regulations.” Accordingly, OIG confirmed, in its February 10, 2017, memorandum that this recommendation is now closed.<sup>6</sup>

**OIG Recommendation #11: “Ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated that, in addition to its actions with respect to recommendations 7 and 8 above, the FARA Unit will standardize its electronic calendaring of inspections and timelines for completion, anticipated to be complete by September 30, 2017. OIG wrote, “This recommendation can be closed when we receive evidence of appropriate and timely follow-up and resolution of findings identified in inspection reports.”

Status: NSD believes this recommendation should be closed and will make such a recommendation in its next status report to the OIG.

Prior to the OIG Audit, NSD developed a policy and procedure to update its internal database in an effort to standardize its system for batching and sending registration delinquency notices at regular intervals. NSD has included in this upgrade a method to ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports. NSD has included in its internal database, a new folder titled “Inspection Tracking.” Within this folder are spreadsheets updated regularly to ensure appropriate and timely follow-up and resolution of findings identified in inspection reports. The internal database is now used for follow-up and resolution of inspection findings. The upgrade became operational on June 5, 2017. Accordingly, NSD believes this recommendation can be closed.

**OIG Recommendation #12: “Perform a formal assessment of the LDA exemption, along with the other current FARA exemptions and determine whether a formal effort to seek legislative change on any of these exemptions is warranted.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated that it has already embarked on a study of Lobbying Disclosure Act and other exemptions, that these efforts will continue, and that NSD will make determinations with respect to need and viability of legislative changes. OIG wrote, “This recommendation can be closed when we receive evidence of the completed LDA assessment and the results of any additional exemption assessments performed by NSD.”

Status: Resolved by the OIG; NSD anticipates it will be closed by the OIG in the upcoming months.

---

<sup>6</sup>*Id.*



NSD continues to assess the viability of a proposal to amend the Lobbying Disclosure Act and other exemptions. Accordingly, NSD believes this recommendation can be closed when the formal assessment is complete and the Department has made a decision on the LDA exemption.

**OIG Recommendation #13: “Conduct a formal cost-benefit analysis to determine whether the current fee structure is appropriate.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it will conduct a formal cost benefit analysis of the fee structure by September 30, 2017. OIG wrote, “This recommendation can be closed when we receive evidence of that analysis and NSD’s resulting decision about the current fee structure.”

Status: Resolved by the OIG; NSD anticipates it will be closed by the OIG in the upcoming months.

NSD is in the process of conducting a formal cost benefit analysis of the FARA filing fee structure. Accordingly, NSD believes this recommendation can be closed when the formal cost benefit analysis is complete.

**OIG Recommendation #14: “Include improvement of timeliness as an objective in the development of the eFile system, to include requiring execution dates for all contracts.”**

NSD agreed with the recommendation. In its response to the OIG report, NSD stated it has determined it is feasible to add a field to collect execution dates for all contracts. OIG wrote, “This recommendation can be closed when we receive documentation demonstrating that NSD has included the improvement of timeliness as an objective in the development of the e-file system, including the requirement of execution dates for all contracts.”

Status: NSD believes this recommendation should be closed and will make such a recommendation in its next status report to the OIG.

The eFile system enables FARA registrants to electronically file documents with the FARA Registration Unit. NSD included in the development of the eFile system a requirement to disclose the execution date for contracts. Under FARA’s current statutory and regulatory authorities, there is no penalty for lateness. Lateness in filing only warrants a criminal remedy where there is evidence of willful conduct. Further, civil injunctions become moot after a person has registered and/or filed the necessary registration statements. As a measure to improve timeliness of filings, a question requiring input of execution date was added to the eFile system currently under development, making the date of the contract more apparent. The feature was added on September 30, 2016. NSD has also added an alert system to the eFile system that is under development. The alert system includes a countdown feature to advise current registrants of the number of days remaining until the supplemental due date,

and provides an alert to the registrant when a supplemental statement is past due. The countdown will begin on the first day of the six-month supplemental reporting period. Accordingly, NSD believes this recommendation can be closed.