



U.S. Department of Justice

National Security Division

Office of the Assistant Attorney General

Washington DC 20530

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Thomas Puerzer  
Regional Audit Manager  
Philadelphia Regional Audit Office  
Office of the Inspector General  
U.S. Department of Justice  
701 Market Street, Suite 201  
Philadelphia, PA 19106

Dear Mr. Puerzer:

The purpose of this letter is to provide the Office of the Inspector General ("OIG") with an update regarding the status of the actions taken by the National Security Division ("NSD") in response to the recommendations of the OIG's audit report dated September 6, 2016, on NSD's Administration and Enforcement of the Foreign Agents Registration Act, as amended, 22 U.S.C. § 611 *et seq.* ("FARA"). The following responses address the status of the 14 recommendations. For ease of review, the recommendations and corrective actions necessary are in bold text below, followed by NSD's response.

**1. OIG Recommendation – Consider the value of making FARA advisory opinions publicly available as an information resource.**

**Resolved. NSD agreed with our recommendation. In its response, 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.**

**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.**

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 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, NSD believes this recommendation can be closed.

2. **OIG Recommendation – 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.**

**Resolved. NSD agreed with our recommendation. In its response, 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.**

**This recommendation can be closed when we receive evidence that the relevant training was updated and provided to prosecutors and agents.**

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 will be including a session on FARA as part of its course at the National Advocacy Center, the National Security Seminar on Export Control, Counterproliferation, and Counterintelligence (“Seminar”), which is scheduled for 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. The session at the Seminar will be similar. In addition, the FARA Unit has recently formally updated its presentation materials to

include a discussion of the time and process for approvals. Accordingly, NSD believes this recommendation can be closed.

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

**Resolved.** NSD agreed with our recommendation. In its response 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. We note that we asked FBI officials about its classification codes for FARA cases both during our audit and subsequent to the issuance of our draft report to NSD, and were told by the FBI that both statutes are recorded under a single FARA code. NSD stated it intends to meet with FBI prior to September 30, 2016, to explore resolution of this issue.

**This 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.**

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, Deputy Assistant Attorney General George Toscas, Deputy Assistant Attorney General Adam Hickey, Principal Deputy Chief of CES, Kathleen Kedian, Deputy Chief of CES, Richard Scott, FARA Registration Unit Chief, Heather Hunt, and FARA Registration Unit Senior Trial Attorney, Clifford Rones, met with Michael Varacalli, Acting Section Chief, CD-4, FBI and Sally Moyer, Unit Chief, National Security Law Branch, FBI, to discuss the OIG Audit, specifically as it pertains to the FBI coding practices referenced in Recommendation #3 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 the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“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 all Section 951 cases as matters separate from FARA. All those present at the meeting agreed that additional training will help clear the confusion. The FBI agreed to engage the FARA Registration Unit in training meetings at the regional and national levels, including at all-hands headquarter meetings and at the FBI regional training conferences. NSD indicated that the training POCs are Heather Hunt and Clifford Rones from the FARA Registration Unit. Accordingly, NSD believes this recommendation can be closed.

4. **OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, 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.

**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.**

The National Security Division 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. FARA's role in the Department's national security efforts is detailed in the National Security Prosecutors' Manual and the United States Attorneys' Manual, which are widely used by the Department and the FBI. The FARA Unit of 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 CI 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 National Intelligence University, the Department of State, and CIA Open Source Enterprise.

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

**Resolved. NSD agreed with our recommendation. In its response, 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.

**This recommendation can be closed when we receive evidence of the steps described and of the updated training materials.**

It is standard practice for NSD prosecutors to timely inform the FBI and the appropriate United States 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. NSD also documents communications with agents and prosecutors regarding any decision to decline prosecution. Meanwhile, as evidenced by the attached materials, 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, NSD believes this recommendation can be closed.

6. **OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, 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 are anticipated to take place during 2016 and 2017.

**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.**

A tool for tracking FARA cases is a component of the CES version of NSD's case management system (CMS), which we anticipate will become operational in early 2017. Specifically, a category for FARA is included in the drop-down menu for entering new matters into the system, thereby ensuring that FARA cases received for review are separately tracked. In addition, the CES case tracking system tracks when FARA cases are received, the approval or denial process, and the decision whether to approve or deny. Attached is a screenshot of the CMS referencing FARA. 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 possible violations of 18 U.S.C. § 951, and will follow up with the FBI to determine if the necessary changes have been implemented.

7. **OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, 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 is anticipated to be complete by September 30, 2017. Additionally, NSD stated that it is committed to developing policy and procedures that ensure appropriate follow-up. 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.

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.

NSD has developed a policy and procedure to update its Content Server in an effort to standardize its system for batching and sending registration delinquency notices at regular intervals. The feature is currently in the latter stages of development.

8. **OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, 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.

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.

NSD has developed a policy and procedure to update its Content Server 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, help ensure registration files are timely closed, and that appropriate actions are taken when obligations are not met for an extended period of time. The feature is currently in the latter stages of development. Once it is deployed, it will be the policy and practice of the FARA Unit to close registration files in a timely manner when warranted.

9. **OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, 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.

**This recommendation can be closed when we receive evidence of such outreach and identification.**

NSD actively seeks leads from CI 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 National Intelligence University, the Department of State, and CIA Open Source Enterprise. In addition, NSD has installed a computer not linked to DOJ to seek information from foreign sources, thereby enabling anonymized searches. Accordingly, NSD believes this recommendation can be closed.

- 10. OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, NSD stated it has 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 Department of Justice.

**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.**

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 prescribed by the Attorney General through regulations.” Accordingly, NSD believes this recommendation can be closed.

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

**Resolved.** NSD agreed with our recommendation. In its response, 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.

**This recommendation can be closed when we receive evidence of appropriate and timely follow-up and resolution of findings identified in inspection reports.**

NSD has developed a policy and procedure to update its Content Server in an effort to standardize its system for batching and sending registration delinquency notices at regular intervals. A feature will be added to this update to standardize follow-up and resolution of findings identified in inspection reports. The feature is currently in development

12. **OIG Recommendation – 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.**

**Resolved.** NSD agreed with our recommendation. In its response, 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 by June 30, 2017.

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.

NSD continues to assess the viability of a proposal to amend the Lobbying Disclosure Act and other exemptions.

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

**Resolved.** NSD agreed with our recommendation. In its response, NSD stated it will conduct a formal cost benefit analysis of the fee structure by September 30, 2017.

This recommendation can be closed when we receive evidence of that analysis and NSD's resulting decision about the current fee structure.

NSD is in the process of conducting a formal cost benefit analysis of the FARA filing fee structure.

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

**Resolved.** NSD agreed with our recommendation. In its response, NSD stated it has determined it is feasible to add a field to collect execution dates for all contracts; however, NSD's response was silent on the overarching issue of incorporating timeliness as an objective in the development of the e-file system, beyond the specific contract date issue. We continue to believe that e-file presents opportunities to better manage and ultimately improve registrant timeliness, and recommend that e-file develop with timeliness as a consideration.

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.**

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 during Development Sprint #26, making the date of the contract more apparent. The feature was added on September 30, 2016. Attached is a screenshot of the feature. Accordingly, NSD believes this recommendation can be closed.

NSD appreciates the opportunity to update the OIG on the status of the recommendations resulting from the OIG's audit of FARA. Please do not hesitate to contact NSD should you have any questions concerning its efforts to respond to the recommendations contained in the OIG September 6, 2016 FARA report.

Sincerely,



G. Bradley Weinsheimer  
Acting Chief of Staff