

# Department of Justice Proposes Major Changes to FARA Regulations, Including Sweeping Changes Affecting Multinational Companies

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Election and Political Law

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On January 2, 2025, the Department of Justice published a [Notice of Proposed Rulemaking](#) (“NPRM”) soliciting public comments on potential amendments to the Department’s regulations regarding the Foreign Agents Registration Act (“FARA”). The regulatory amendments proposed by the Department are significant, and they would take the statute in a substantially different direction. As detailed below, the proposed changes would completely overhaul an exemption for commercial activity by foreign corporations, which has existed in its current form for more than two decades, and make other consequential changes, including changes to an exemption for lawyers representing foreign interests.

Overall, in our assessment, the proposed revisions would considerably increase the Department’s ability to use its own discretion to decide whether a given set of activities requires registration and reporting under FARA. By empowering the Department to apply a variety of amorphous, nonexclusive, and open-ended factors, the proposed regulations would give the Department expanded discretion to determine whether activities fall within, or outside of, the statute’s registration and reporting requirements. The proposed expanded discretion, however, comes at a significant cost to companies, associations, firms, think tanks, and others that rely on relative certainty about the bounds of the statute.

The proposed regulations themselves come with their own bit of history. In December 2021, the Department issued an advanced notice of proposed rulemaking that posed a series of questions about potential revisions to the regulations. After assessing responses to the advanced notice, beginning in December 2022, the Department repeatedly expressed publicly that the proposed regulations would be issued “soon” or “in the coming months,” but the publication of the proposed regulations was continuously delayed. The proposed regulations also appear to have encountered some regulatory hiccups. The Office of Information and Regulatory Affairs at the Office of Management and Budget (“OMB”) indicated that it had completed [regulatory review](#) on July 11, 2024, and the OMB [website](#) stated that the NRPM was slated to come out in July 2024. The proposed regulations were nonetheless not released informally until last month and then published in the Federal Register at the start of the new year. It is possible that the impending change in presidential administration prompted the Department to get the NPRM over the line and published, although it remains to be seen whether the new administration will seek to follow through on the proposed changes contained in the NPRM.

This advisory details the Department's proposed revisions to the regulations and the implications of these proposed changes for multinational corporations, law firms, nonprofits, lobbying and consulting firms, public relations companies, and other organizations that may engage in activity within the scope of the statute.

## **I. Background**

FARA requires that agents of foreign principals register with the Attorney General and file detailed disclosure reports every six months, along with "informational materials" that an agent may distribute on behalf of the foreign principal.

The scope of agency under FARA is very broad and exceeds traditional principles of agency law. FARA defines a foreign agent as any individual or entity that engages, within the United States, in certain activities on behalf of a foreign principal. Agency is established by acting at the "order, request, or under the direction or control" of the foreign principal, as well as by activities that are "directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part" by the foreign principal. A foreign principal can be any person or entity outside the United States. Although foreign governments are widely understood to be covered by FARA, the statute actually applies to a much broader array of foreign principals, including individuals, partnerships, associations, corporations, or any other entity organized under the laws of another country. The term even extends to U.S. citizens domiciled outside of the United States.

Registration and reporting are required when an agent of a foreign principal engages in one or more of the following activities within the United States, unless an exemption from registration applies:

- (1) Engaging in "political activities," a defined term that encompasses any activity that is intended or believed to influence the U.S. government or any section of the U.S. public regarding a matter of U.S. foreign or domestic policy or the interests of a foreign country or political party.
- (2) Acting as a "public-relations counsel," "publicity agent," "information-service employee," or "political consultant," each of which is defined by the statute.
- (3) Collecting or dispensing money or other things of value for or in the interest of a foreign principal.
- (4) Representing the interests of the foreign principal before an agency or official of the U.S. government, such as making direct contact with U.S. government officials.

## **II. The Department's Proposed Changes to FARA Regulations**

### Commercial Exemptions

The most dramatic changes proposed in the NPRM would overhaul the current regulations' exemption for commercial political activity by a foreign corporation. This exemption was adopted in 2003, as the Department implemented the statutory changes that Congress adopted in the context of enacting the Lobbying Disclosure Act ("LDA") in 1995. In the LDA, Congress indicated its intent to place all private sector lobbying under the new lobbying disclosure law, leaving only activity on behalf of foreign governments under FARA. Consistent with that direction, the Department adopted a broad exemption from FARA for foreign commercial political activity.

## 1. *Current Law*

FARA has a statutory commercial exemption that applies to “private and nonpolitical activities in furtherance of the bona fide trade or commerce” of the foreign principal. In the 2003 regulatory amendments implementing the LDA, the Department created an additional regulatory commercial exemption. Adopted under a separate statutory authority exempting “other activities not serving predominantly a foreign interest,” the Department’s regulatory commercial exemption provides a complete exemption from FARA for any foreign corporation that was engaged in political activity “directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation.” The current regulations also impose some limitations on the application of both the statutory and regulatory commercial exemptions. Most significantly, neither exemption is available if the activities “directly promote” the public or political interests of a foreign government or political party.

## 2. *Proposed Changes to the Regulatory Commercial Exemption for Foreign Corporations Engaged in Political Activity*

The Department proposed significant changes to the regulatory commercial exemption for foreign corporations engaged in political activity. In the NPRM, the Department proposed to eliminate completely the full exemption for corporate political activity that furthers a commercial interest. In its place, the Department has proposed through regulation a “predominant interest” test—with only one factor in the non-exhaustive test related at all to corporate commercial activity—and four new exclusions that would preclude the use of the exemption completely in certain circumstances.

The NPRM, interestingly, presented these new criteria in the reverse order—outlining the four new exclusions and then describing the “predominant interest” test that would apply if an exclusion did not apply. The effect, we believe, is actually the opposite: the “predominant interest” test would be the actual prevailing analysis—consistent with the statutory exception for activities “not serving predominantly a foreign interest”—and the four exclusions would merely preclude the application of the “predominant interest” test in certain circumstances.

Taking the proposed rules in the order they are presented in the NPRM, however, the four new exclusions would preclude the application of the exemption in the following circumstances:

- (1) The exemption would be unavailable if the “intent or purpose” of the activities were to promote the political or public interests of a foreign government or foreign political party.
- (2) The exemption would be unavailable if a “foreign government or foreign political party influences the activities.”
- (3) The exemption would be unavailable if the “principal beneficiary of the activities” were a foreign government or foreign political party.
- (4) The exemption would be unavailable if the activities “promote the public or political interests” of a foreign government or political party and the activities are “directly or indirectly supervised, directed, controlled, or financed” by a foreign government or political party.

For all other instances, the NPRM proposed a “predominant interest” test. The NPRM provided a “non-exhaustive list of factors to determine whether, given the totality of the circumstances, the predominant interest being served is domestic rather than foreign.” The NPRM identified the following factors:

- (1) Whether the agent’s relationship and the identity of the foreign principal is “open and obvious to the public and explicitly disclosed” to U.S. government officials.
- (2) Whether the activities further the bona fide commercial, industrial, or financial interests of a domestic commercial entity (e.g., a U.S. subsidiary of a foreign parent) “as much or more than” the interests of the related foreign entity (i.e., the foreign parent company).
- (3) For noncommercial entities, the extent to which the activities are influenced by a foreign entity, concern a foreign jurisdiction, or are financed by foreign sources.
- (4) Whether the activities concern laws or policies applicable to the U.S. operations or interests of the domestic person.
- (5) The extent to which a foreign principal influences the activities of the domestic person.

Collectively, these proposed changes would convert the existing exemption for foreign corporate commercial activity into a much narrower exemption covering only activities that predominantly serve a U.S. domestic interest. A foreign corporation could no longer seek to influence the U.S. government or public on a policy issue that primarily affects the commercial interests of the foreign corporation without triggering FARA’s registration and reporting obligations. Many companies, for example, rely on the existing commercial exemption to address situations in which executives of a foreign headquartered company come to the United States to meet with government officials and discuss the company’s global commercial issues. Under the proposed new regulations, the exemption would only be available if the executive discussed only issues where the “predominant interest” is in the United States, notwithstanding the company’s global activities and footprint. Notably, this regulation would only constrain foreign company executives. Executives in the United States representing only U.S.-headquartered companies would be free to discuss their companies’ global operations without limitation from FARA.

### *3. Proposed Changes to Existing Limitations on the Commercial Exemptions*

The Department also proposed a major change to the existing limitation on both the statutory and regulatory commercial exemptions, which provides that neither exemption is available if the activities “directly promote” the public or political interests of a foreign government or political party. In the commentary accompanying the proposed new rules, the Department correctly noted that it is sometimes difficult to discern whether a given set of activities “directly” promotes the interest of a foreign government or only indirectly promotes such interests. The NPRM also pointed to comments submitted in response to the advanced notice of proposed rulemaking that made the same point.

To address these issues, the Department proposed deleting the word “directly.” As a result, the proposed new limitation would preclude the use of this exemption for *any* activity that promotes the interests of a foreign government—no matter how marginal, minimal, tangential, or inconsequential. This is a massive change from current law, reflecting a significant narrowing of the existing commercial exemptions.

Although the parameters of “directly promote” are indeed sometimes hard to discern, there are some areas that are well-defined in precedents. For example, general efforts to promote the commercial interests of a foreign corporation have been considered outside of FARA even though the increased revenue for the foreign corporation would lead, indirectly, to increased tax revenue for the company’s home government. With this proposed change, however, any activity that promotes the interests of a foreign government would be excluded from the exemption. The deletion of “directly” additionally suggests that the proposed regulations would not require any nexus between the purpose of the relevant activity and the benefit provided to the government.

Consider, for example, if a major foreign automobile manufacturer were to engage in a public relations campaign to sell more cars. Such a campaign would be within the scope of the FARA trigger for “public relations” activities, but the activities would be exempted from registration due to the current commercial exemptions. The limitations in the current commercial exemptions—precluding the exemption for activities that “directly promote” a foreign government’s interest—would not apply because the benefit to the government would only be indirect, such as through increased tax revenue. The proposed regulations, however, would preclude the statutory exemption for “private and nonpolitical activities in furtherance of the bona fide trade or commerce” if there is *any* benefit to a foreign government. Additionally, under the proposed changes to the regulatory commercial exemption, the Department would have broad discretion to determine whether the activities meet the “predominant interest” test, including discretion to consider indirect foreign governmental benefits. As a result, depending on the Department’s application of these changes to the exemptions and limitations, the proposed change could bring these types of commercial campaigns within the statute.

#### *4. Other Changes in the Existing Commercial Aspects of FARA*

The Department also proposed other less noteworthy, but nonetheless significant and consequential, changes to various commercial aspects of FARA.

First, where the current regulatory commercial exemption applies only to “political activity” of a “foreign corporation,” the Department proposed two important and welcome changes. The new exemption would apply to any activity, not just political activity. Political activity is just one of four types of activity that can trigger the statute, and the application of the exemption to all FARA-related activity would be a welcome change. In addition, the Department proposed to codify a position that it has taken in various advisory opinions specifying that this exemption can apply to nonprofit entities, in addition to for-profit corporations, which aligns with the Department’s proposed move away from treating the exemption as a purely commercial exemption.

Second, the Department proposed that promotion of “bona fide recreational or business travel to a foreign country” no longer requires FARA registration and reporting. This proposal would be a significant abandonment of the Department’s [long-held position](#) that tourism promotion activities require FARA registration. Previously, the Department took the position that tourism promotion constituted political activities because tourism “creates an influx of capital and a host of jobs” for the foreign country. In the NPRM, the Department noted that tourism promotion is “attenuated from political or policy matters” and the sponsor of such promotion is usually readily apparent to the viewer. Although these observations seem very true, and the FARA Unit’s special treatment of tourism promotion does seem significantly anachronistic in today’s environment, the proposed change is curious in several ways. First, the Department has been moving over the last few years to expand FARA’s coverage into activities related to foreign direct investment and sovereign wealth fund investments in the United States. These activities also seem “attenuated

from political or policy matters” and focused on “an influx of capital and . . . jobs.” It is hard to reconcile the FARA Unit’s recent focus on expanding the scope of the statute into these areas and the proposed regulation’s abandonment of FARA’s application to tourism promotion. Second, in recent years, foreign countries have deployed increasingly sophisticated efforts at tourism promotion, including some that have received attention under FARA. For example, some U.S. sports teams have received public attention for accepting sponsorship agreements from foreign countries, foreign country airlines, and foreign country tourism authorities. In this context, it is notable that the Department seems to be proposing to remove this entire part of the foreign tourism industry from the scope of FARA.

## Lawyers’ Exemption

### 1. *Current Law*

FARA provides an exemption from registration for “[a]ny person qualified to practice law” who engages in a “legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States.” Under the current regulations, this lawyers’ exemption is limited and is not available if the lawyer “attempts to influence or persuade agency personnel or officials” outside of the relevant of the relevant legal proceeding (“judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record”).

The lawyers’ exemption is one of the few areas in FARA that has seen significant improvement in the past few years. After first issuing an advisory opinion that essentially limited lawyers to in-court activities, the Department changed course and acknowledged that lawyers are engaged by clients to provide a variety of representational activities.<sup>1</sup> In revised guidance, the Department clarified that the lawyers’ exemption applies to all services within the “bounds of normal legal representation of a client.”<sup>2</sup>

### 2. *Proposed Changes to the Lawyers’ Exemption*

In the NPRM, the Department proposed codifying the “bounds of normal legal representation” standard and provided specific examples of activities that would be included within the scope of a legal representation. The proposed regulations would specify that influencing government officials in a proceeding and providing information to others—such as the public—about the proceeding would be within the exemption. The proposed regulations would also require an attorney to disclose the attorney’s foreign principal to the court, agency personnel, or officials before whom the attorney appears.

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<sup>1</sup> See Brian D. Smith, Robert Kelner, Derek Lawlor, and Alex Langton, *A Curious Advisory Opinion Reinterprets the FARA Exemption for Lawyers (and Resolves a FARA Mystery)* (Jan. 11, 2021), <https://www.insidepoliticallaw.com/2021/01/11/a-curious-advisory-opinion-reinterprets-the-fara-exemption-for-lawyers-and-resolves-a-fara-mystery/>.

<sup>2</sup> See *Deputy Assistant Attorney General for the National Security Division Adam Hickey Delivers Remarks at the ACI 2nd National Forum on FARA* (Dec. 4, 2020), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-national-security-division-adam-hickey-delivers-remarks>.

In addition to codifying the current application of the exemption, the Department also proposed adding a significant new limitation on the lawyers' exemption. The proposed limitation would preclude the application of the exemption to "political activities" undertaken by the lawyer, which are activities that are intended or believed to influence the U.S. government or public on a matter of policy.

The proposed revised regulations, therefore, would permit a lawyer to provide information to the public about a legal proceeding, but the lawyer could not attempt to influence the government or public through such statements without exceeding the exemption and therefore triggering FARA registration. This seems an unworkable tightrope to walk for any lawyer engaged in a proceeding that garners public attention. It seems impossible to suggest that a lawyer, for example in a press conference on the courthouse steps, could explain and present the client's arguments and positions in the litigation without influencing the views of someone who is listening.

Additionally, and consistent with the NPRM's treatment of the commercial exemption, this proposal seems to give the FARA Unit maximum discretion to decide whether any given activity falls outside of the statute and exemption. Instead of providing the (relatively) clear guardrails that lawyers are exempt if they do "normal" things, this proposal would give the Unit the ability to conclude independently that some set of activities were intended to influence the public, and thus were not exempt under the lawyers' exemption.

## Informational Materials

### *1. Current Regulations*

In addition to imposing registration and reporting obligations on FARA registrants, FARA also requires that registrants file copies of "informational materials" with the Department and include disclaimers on those materials. Any time a registrant disseminates "informational materials" for or in the interests of a foreign principal, the registrant must file a copy of the informational materials with the Department's FARA Unit within forty-eight hours. Informational materials must also have a "conspicuous statement" identifying the registrant and its foreign principal. Notably, the term "informational materials" is not currently defined specifically in the statute or regulations (although there is a long list of document types that can be considered informational materials "prints").

### *2. Proposed Changes to the "Informational Materials" Definition*

The proposed changes would define "informational materials." The proposed definition covers "any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party." The manner or form of dissemination (i.e., print or electronic) would not affect whether the material meets the definition. Providing this actual definition for informational materials is a helpful clarification by the Department.

### *3. Proposed Changes to the Filing and Labeling Requirements*

For filing informational materials, the proposed regulations would require screen captures or contemporaneous reproductions of all informational materials to be filed as a PDF or other standard electronic file format.

In addition, the proposed regulations impose several changes to the “conspicuous statement” labeling requirements. The proposed regulations would require the conspicuous statement to include the foreign principal, the country (or state, territory, or principality) in which the foreign principal is located, and the FARA registration number, none of which are required in the statement under current guidance. The statement would also need to be in a “font size and color that are easy to read.”

The proposed regulations further detail more specific rules regarding the placement and font or size of the conspicuous statement for print, television, and radio content, as well as online content. For example, when informational materials contain an author’s byline, signature block, or biographical information, the conspicuous statement would be required to be placed in the byline, signature block, or biographical information in addition to the beginning of the materials. When informational materials are televised or broadcast, they would be required to contain a conspicuous statement at the beginning and end of the informational materials.

For online content, the proposed rules distinguish cases where the registrant has administrative rights over the internet platform and those where it does not. Where the registrant has administrative rights, the conspicuous statement would be required to appear on the website “home” page and “about” page. The conspicuous statement on these pages would also need to include a hyperlink to the registrant’s filings on the FARA website. Each individual post to the website for or in the interests of the registrant’s foreign principal would be required to include the conspicuous statement, with a hyperlink to the registrant’s filings. If the platform lacks space for the full conspicuous statement, then each covered comment or post on the platform would be required to include an embedded image of the conspicuous statement on the face of the comment or post, along with the term “FARA,” the registrant’s registration number, and an electronic link to the registrant’s filings. Where the registrant does not have administrative rights, each covered post to the website would be required to include the conspicuous statement, with a hyperlink to the registrant’s filings on the Department’s FARA website. Similar rules would apply where there is insufficient space for the full disclaimer.

#### *4. Proposed Changes to the Notification Requirement for “Political Propaganda”*

The proposed regulations clarify the notification requirement for “political propaganda.” Currently, registrants may not convey to any agency or government official, in the interests of a foreign principal, political propaganda or request certain information and advice, unless the propaganda or request is prefaced or accompanied by a true and accurate statement that the person is a registrant. The proposed changes would give the “political propaganda” definition the same meaning as “informational materials.” Significantly, the changes broaden “any request” to include all communications *related* to the request, including any communications regarding the scheduling of a meeting. As a result, registrants would be required to include a disclaimer on all communications with U.S. government officials relating to any request, including scheduling meetings.

### FARA eFile System

In addition to requiring registrants to file registration statements, supplements, and related documentation on the FARA Unit's new e-File system, agents would also be required to provide their business telephone numbers and business e-mail addresses to facilitate better communications with the FARA Unit.

### Advisory Opinion Process

Individuals and corporations generally can request an advisory opinion from the FARA Unit to clarify whether there is a FARA registration obligation under specified, prospective facts. Under the current regulations, the Department must issue the opinion within thirty days of receiving the complete request, but in practice the FARA Unit often asks follow-up questions that can extend the actual timeline for receiving a decision.

The proposed regulations would institute changes to the advisory opinion process. First, the proposed regulations would require that the request for an advisory opinion and the corresponding filing fee be made electronically via the Department's FARA website. The proposed regulations would also add a requirement that when a request for an advisory opinion is not regarding an individual, "the request must include a list of partners, officers or directors or persons performing the functions of an officer or director of the entity and all relevant and material information regarding their current or past affiliation with a foreign government or foreign political party." Finally, the proposed regulations would require that all submissions from a party be "signed by the same person . . . 'except for good cause.'"

### Many Provisions Remain Unchanged

The Department notably did not propose any changes to several areas of the FARA statute that have created uncertainty in the regulated community.

- (1) *LDA Exemption*: The Department did not propose to make regulatory changes to the LDA exemption. In the NPRM, it stated that it will "continue to deny the exemption . . . in any situation where a foreign government or foreign political party is the principal beneficiary of the lobbying activity." In separate communications, Department officials have made clear that their legislative priorities include eliminating the LDA exemption to FARA, including in [congressional correspondence](#) and [public statements](#). Together with the elimination of the broad commercial exemption for political activities, the elimination of the LDA exemption would significantly expand the scope of foreign private sector entities that would be required to register under FARA.

The NPRM did address the LDA exemption in one significant and important way. In a major concession, the Department expressly backed away from the position it had taken in certain advisory opinions (which Covington was the first to highlight [here](#)) that the LDA exemption is not available if *any* principal beneficiary of the activity is a foreign government, even though the regulation plainly limits the exemption only if "the" principal beneficiary is a government.

- (2) *Press Exemption*: The Department also did not propose changes to the press exemption. By statute, the press exemption excludes from the definition of an agent of a foreign principal certain domestic newspapers, magazines, and other publications engaged in bona fide news or journalistic activities. While the Department did not propose regulations to the exemption, it notably stated that "there is no sound statutory

or policy reason to distinguish between online and traditional print media” with respect to this press exemption, and “the statutory language does not in fact compel any such distinction.” As a result, the Department reasoned that even though an online-only media entity “cannot qualify as a publication having mail privileges with the U.S. Postal Service,” one of the criteria in the text of the press exemption, “such a media entity could still qualify for the exclusion so long as it otherwise complies with the remaining criteria set forth” in the exemption.

- (3) *Scope of Agency*: In response to the advance notice, the FARA Unit received several comments encouraging the Department to clarify the scope of agency under FARA. The FARA Unit declined to make regulatory changes in response to these comments, stating “the Department is not proposing to adopt the common-law definition of agency or to codify the [Scope of Agency guidance document](#) in the FARA regulations at this time.” The Department published the Scope of Agency guidance document in 2020, detailing several factors it will consider in evaluating agency under the statute.
- (4) *Academic Exemption*: An academic exemption to FARA applies to persons solely engaged in bona fide religious, scholastic, academic, or scientific pursuits or the fine arts. Current regulations provide that the exemption is not available if the person is engaged in “political activities,” a significant limitation on the exemption. The Department did not believe changes were necessary to this exemption, stating that it can provide “reasonable guidance” through the “advisory opinions process.”

#### Repeated Deferral to Advisory Opinion Process

Finally, the NPRM is notable for its repeated references to the advisory opinion process, and the narrative accompanying the proposed regulations repeatedly and expressly defers some of the thorniest and important issues in the proposed regulations for resolution through future advisory opinions. This unusual reliance on the advisory opinions process, in lieu of proposing specific and well-defined regulations, aligns with our initial observation that the proposed regulations would substantially increase the Department’s discretion in applying FARA. Given the time and effort that the Department and commenters devoted to the proposed regulations, we would have preferred that the regulations provide clear and measurable criteria for triggering the statute. This can be done. For example, the LDA has measurable time, monetary, and contact criteria, and it specifically defines the government officials the statute covers. The narrative in the NPRM and the proposed regulatory changes to FARA move, unfortunately, in the opposite direction. In our view, the proposed regulations should instead provide clear guidance to the regulated community about the bounds of the statute, rather than deferring application of the statute to individual review by the Department.

### **III. Next Steps**

The proposed rules are not final. The NPRM provides the public the continued opportunity to submit comments on the proposed regulations. Covington advises clients on a range of FARA compliance and investigations matters, and it can assist with submitting comments on these proposed regulations and providing guidance on the application of the proposed regulations. Comments on the proposed regulations are due on or before March 3, 2025 (sixty days after the date of publication in the Federal Register). Paper comments must be postmarked on or before that date, and electronic comments will be accepted until 11:59 p.m. eastern on that date.

The [attached appendix](#) shows the Department's proposed regulatory changes in a redline against the existing regulations.

If you have any questions about the NPRM or would like to consider submitting comments, please contact a member of Covington's [Election and Political Law](#) practice.

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## Appendix

### **Advisory Opinion Process—28 C.F.R. § 5.2**

(c) *Fee.* All requests for statements of the Department's present enforcement intentions must be accompanied by a non-refundable filing fee submitted in accordance with §5.5. Payment of the filing fee shall be made electronically via the Department's FARA website.

(d) *Submission Address.* A review request must be submitted in writing to the FARA Unit through the Department's FARA website Assistant Attorney General for National Security, Department of Justice, Washington, DC 20530.

(e) *Contents.* A review request shall be specific and contain in detail all relevant and material information bearing on the actual activity, course of conduct, expenditure, receipt of money or thing of value, or transaction for which review is requested. There is no prescribed format for the request, but each request must include:

- (1) The identity(ies) of the agent(s) and foreign principal(s) involved;
- (2) The nature of the agent's activities for or in the interest of the foreign principal;
- (3) A copy of the existing or proposed written contract with the foreign principal or a full description of the terms and conditions of each existing or proposed oral agreement; ~~and~~
- (4) In cases where a party is seeking an exemption or exclusion, the applicable statutory or regulatory basis for the exemption or exclusion claimed.
- (5) In cases where a request is not for or regarding an individual, a list of partners, officers or directors or persons performing the functions of an officer or director of the entity and all relevant and material information regarding their current or past affiliation with a foreign government or foreign political party.

(f) *Required Signatures. Certification* If the requesting party is an individual, the review request must be signed by the prospective or current agent, or, if the requesting party is not an individual, the review request must be signed on behalf of each requesting party by an officer, a director, a person performing the functions of an officer or a director of, or an attorney for, the requesting party. ~~Each such person signing the review request must certify that the review request contains a true, correct and complete disclosure with respect to the proposed conduct.~~

(g) *Additional information.* Each party shall provide any additional information or documents the National Security Division may thereafter request in order to review a matter. Any information furnished orally shall be confirmed promptly in writing. All submissions shall be signed by the same person or persons who signed the initial review request, except for good cause and certified to be a true, correct and complete disclosure of the requested information.

(h) *Certifications.* Each such person signing a review request pursuant to § 5.2(f) or a submission of information pursuant to § 5.2(g) must certify that the document(s) contain a

true, correct, and complete disclosure with respect to the proposed conduct or additional information described.

~~(h)~~ *Outcomes.* After submission of a review request, the National Security Division, in its discretion, may state its present enforcement intention under the Act with respect to the proposed conduct; may decline to state its present enforcement intention; or, if circumstances warrant, may take such other position or initiate such other action as it considers appropriate. Any requesting party or parties may withdraw a review request at any time. The National Security Division remains free, however, to submit such comments to the requesting party or parties as it deems appropriate. Failure to take action after receipt of a review request, documents or information, whether submitted pursuant to this procedure or otherwise, shall not in any way limit or stop the National Security Division from taking any action at such time thereafter as it deems appropriate. The National Security Division reserves the right to retain any review request, document or information submitted to it under this procedure or otherwise and to use any such request, document or information for any governmental purpose.

~~(j)~~ *Time for response.* The National Security Division shall respond to any review request within 30 days after receipt of the review request and of any requested additional information and documents.

~~(k)~~ *Written decisions only.* The requesting party or parties may rely only upon a written Foreign Agents Registration Act review letter signed by the Assistant Attorney General for National Security or his delegate.

~~(l)~~ *Effect of review letter.* Each review letter can be relied upon by the requesting party or parties to the extent the disclosure was accurate and complete and to the extent the disclosure continues accurately and completely to reflect circumstances after the date of issuance of the review letter.

~~(m)~~ *Compliance.* Neither the submission of a review request, nor its pendency, shall in any way alter the responsibility of the party or parties to comply with the Act.

~~(n)~~ *Confidentiality.* Any written material submitted pursuant to a request made under this section shall be treated as confidential and shall be exempt from disclosure.

(o) The Department will not respond to any request for its present enforcement intentions that is not in compliance with the provisions of this section.

#### **Scope of Agency—28 C.F.R. § 5.100(a)(12)**

[No changes]

As used in the Act, the term control or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.

#### **Definition of Informational Materials—28 C.F.R. § 5.100(g)**

[New]

(g) The term informational materials, as used in section 4 of the Act, shall be deemed to

include any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. The manner or form of dissemination, whether in print, electronic, or otherwise, does not change whether material falls under this definition.

#### **Short Form Registration Statement—28 C.F.R. § 5.202(e)**

(e) The short form registration statement shall be filed on a form provided by the Department. When required to file a short form registration statement, the person rendering services shall file a separate short form registration statement for each foreign principal represented by the person Form OBD-66. Any change affecting the information furnished with respect to the nature of the services rendered by the person filing the statement, or the compensation the person~~he~~ receives, shall require the filing of an amendment to thea new short form registration statement within 10 days after the occurrence of such change. There is no requirement to file exhibits or supplemental statements to a short form registration statement.

#### **Provision of Business Contact Information—28 C.F.R. § 5.212**

[New]

Each registrant shall provide, separate from the registration statement, a business email address and business telephone number, to facilitate easier communications with the FARA Unit.

#### **Consular/Foreign Government Official Exemptions—28 C.F.R. § 5.302**

The exemptions provided by sections 3(b) and (c) of the Act shall not be available to any person described therein unless such person~~he~~ has filed with the Secretary of State an accepted a fully executed Notification of Appointment of Status with a Foreign Government (Form D.S. 394). Employee via the Department of State's electronic system (eGov) or equivalent successor system.

#### **(d)(1) Commercial Exemption—28 C.F.R. § 5.304(b)**

(b) For the purpose of section 3(d)(1) of the Act, ~~activities:~~

(1) Activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered “private,” even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not ~~directly~~ promote the public or political interests of the foreign government.

(2) Any person or employee of such person who engages or agrees to engage only in transparently promoting bona fide recreational or business travel to a foreign country shall be deemed to be engaging or agreeing to engage in private and nonpolitical activities in furtherance of the bona fide trade or commerce of a foreign principal.

**(d)(2) Commercial Exemption—28 C.F.R. § 5.304(c)**

(c) For purposes the purpose of section 3(d)(2) of the Act, this exemption is available to an agent of a foreign principal a person engaged in political activities for or in the interests on behalf of commercial and non-commercial entities alike, so long as the activities do not serve predominantly a foreign interest corporation, even if owned in whole or in part by.

(d) For purposes of section 3(d)(2) of the Act:

(1) The activities of an agent of a foreign principal serve government, will not be serving predominantly a foreign interest, and the exemption is unavailable, where any the political activities are directly in furtherance of the ,following is true bona fide commercial, industrial;

(i) The intent or purpose financial operations of the activities is to promote foreign corporation, so long as the political or public interests of activities are not directed by a foreign government or foreign political party;

(ii) A foreign government or foreign political party influences and the activities;

(iii) The principal beneficiary of the activities is a foreign government or foreign political party; or

(iv) In the case of a person whose activities are directly or indirectly supervised, directed, controlled, or financed in whole or in substantial part by a government of a foreign country or a foreign political party, the activities do not directly promote the public or political interests of a foreign government or of a foreign political party; and

(2) In cases in which the exclusions in paragraph (d)(1) of this section do not preclude the exemption, additional factors will inform an analysis as to whether the activities nonetheless serve predominantly a foreign interest. Such factors include:

(i) Whether the relationship to and identity of any foreign principal is open and obvious to the public and explicitly disclosed to any agency or official of the United States with whom such activities are conducted;

(ii) Whether, in the case of a domestic commercial entity, the activities further the bona fide commercial, industrial, or financial interests of that domestic entity as much or more than the commercial, industrial, or financial interests of a related foreign commercial entity;

(iii) In the case of an agent of a non-commercial or nonprofit organization located in the United States, the extent to which the activities of the organization are influenced by a foreign entity or concern a foreign jurisdiction, including the extent to which domestic sources rather than foreign ones fund the activities of the organization;

(iv) Whether the activities concern laws or policies applicable to the U.S. operations or interests of the domestic person; and

(v) The extent to which a foreign principal influences the activities of the domestic person.

**Academic Exemption—28 C.F.R. § 5.304 (d)**

[No change; redesignated as paragraph (e)]

The exemption does not apply to an agent of a foreign principal engaged in “political activities.”

**Lawyer’s Exemption—28 C.F.R. § 5.306**

(a) Any person qualified to practice law who engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States may be entitled to the exemption provided such of the Act—representation (a) Attempts does not extend beyond the bounds of normal legal representation as described in paragraph (b) of this section.

(b) “Legal representation” includes:

(1) Activities by retained and disclosed counsel intended to influence or persuade agency personnel or officials other than in the course of judicial proceedings,; criminal law or civil law-enforcement inquiries, investigations, or proceedings,; or agency proceedings conducted on the record required by statute or regulation to be concerning the disclosed foreign principal; and , shall include only such attempts to influence or persuade with reference to formulating, adopting

(2) Activities other than political activities, by the same counsel, that fall within the bounds of normal legal representation and involve providing information about the aforementioned proceeding, inquiry, or investigation, during the pendency of that proceeding, inquiry, changing the domestic or investigation foreign policies of the United States or with reference to persons other than the agency or official decision-makers the political.

(c) Regardless of whether court or agency procedures require it, the public interests, policies, or relations of a government of a foreign country or a foreign political party; and (b) If an attorney engaged in legal representation on behalf of a foreign principal before a court of law or an agency of the U.S. Government of the United States must is not otherwise required to disclose the attorney’s foreign identity of his principal to the court or agency as a matter of established agency procedure, he must make such disclosure, in conformity with this section of the Act, to each of the agency’s personnel or officials before whom the and at attorney appears time his legal representation is undertaken. The burden of establishing that the required disclosure was made shall fall upon the person claiming the exemption.

**Lobbying Disclosure Act Exemption—28 C.F.R. § 5.307**  
[No changes]

The DOJ will accept a duly executed registration statement filed pursuant to the LDA as prima facie evidence of registration. The exemption does not apply if the principal beneficiary is a foreign government or political party.

**Filing of Informational Materials—28 C.F.R. § 5.400**

- (a) The informational materials required to be filed with the Attorney General under section 4(a) of the Act shall be filed with the Registration Unit no later than 48 hours after the beginning of the transmittal of the informational materials.
- (b) Whenever informational materials have been filed pursuant to section 4(a) of the Act, an agent of a foreign principal shall not be required, in the event of further dissemination of the same materials, to forward additional copies thereof to the Registration Unit.
- (c) Unless specifically directed to do so by the Assistant Attorney General, a registrant is not required to file a copy of a motion picture which he disseminates on behalf of his foreign principal, so long as he files monthly reports on its dissemination. In each such case this registrant shall submit to the Registration Unit either a film strip showing the label required by section 4(b) of the Act or an affidavit certifying that the required label has been made a part of the film.
- (d) Unless the format of the informational materials is incompatible with the Department's FARA eFile system and the Department has granted permission to file the materials by an alternative and approved method, informational materials shall be filed with the Attorney General through the Department's FARA eFile system.
- (e) Unless otherwise directed by the Assistant Attorney General, screen captures, or contemporaneous reproductions of all informational materials referenced in § 5.401 (f)-(g), shall be filed as a PDF or other standard electronic file format compatible with the Department's FARA eFile system.

**Labeling of Informational Materials—28 C.F.R. § 5.401**  
[§ 5.402 removed; replaced by § 5.401 reproduced below]

- (a) Definition of a "conspicuous statement." Except as set forth specifically in paragraphs (b) through (g) of this section, a conspicuous statement placed on informational materials must contain the language set forth in section 4(b) of the Act as well as the name of the foreign principal, the country (or state, territory, or principality) in which the foreign principal is located, the FARA registration number, and note that further information is available via the FARA website of the Department of Justice.
- (b) Default labeling requirement. Subject to the additional or different requirements set forth in paragraphs (c) through (g) of this section when applicable, informational materials shall be deemed to contain a conspicuous statement if they contain a label satisfying the requirements of section 4(b) of the Act and paragraph (a) of this section at the beginning of the materials in the language or languages used therein and in a font size and color that are easy to read.

(c) Author. When informational materials contain an author's byline, signature block, or biographical information, the conspicuous statement must be placed in the byline, signature block, or biographical information in addition to the beginning of the materials, as set forth in paragraph (b) of this section.

(d) Televised or broadcast.

(1) When informational materials are televised or broadcast, they must contain a conspicuous statement at the beginning and the end of the informational materials. If the running time for the informational materials exceeds one hour, then the conspicuous statement must be repeated once per hour in addition to occurring at the beginning and at the end of the informational materials. If the informational materials are presented in audio only, then the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend. If the informational materials are presented in an audio-visual format, then the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend and must appear on the screen long enough to be noticed, read, and understood by the viewer.

(2) As used in this part, the term "broadcast" includes, but is not limited to, transmittal reasonably calculated to reach an audience in the United States through an internet-based website, mobile application, television network or radio frequency, cable or satellite service, or telephonic message.

(e) Still or motion picture film. An agent of a foreign principal who transmits or causes to be transmitted in the U.S. mails or by any means or instrumentality of interstate or foreign commerce a still or motion picture film which contains informational materials shall insert at the beginning, or, if it is a motion picture film, at the beginning and at the end, a statement that satisfies the requirements of section 4(b) of the Act and paragraph (a) of this section. For a still, the conspicuous statement shall be in a font size and color that are easy to read. For a motion picture, the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend, must appear in a font size and color that are easy to read and that stand out against the background, and must appear on the screen long enough to be noticed, read, and understood by the viewer.

(f) Internet website or platform for which registrant has administrative rights. Informational materials posted by a registrant on an internet platform or website, which is hosted or controlled by the registrant, or for which the registrant otherwise has administrative rights, shall contain a conspicuous statement that satisfies the requirements of section 4(b) of the Act and paragraph (a) of this section, in a font size and color that are easy to read and that stands out against the background, on the website "home" page and on the website "about" page. The conspicuous statement on these pages shall also include a hyperlink to the registrant's filings on the Department's FARA website. Each individual post to the website for or in the interests of the registrant's foreign principal shall bear the conspicuous statement, with a hyperlink to the registrant's filings on the Department's FARA website. If the internet platform or website does not provide sufficient space for the full conspicuous statement, as set forth in section 4(b) of the Act and paragraph (a) of this section, the registrant or anyone acting on the registrant's behalf must include in each comment or post on the internet platform or website an embedded image of the conspicuous statement on the face of the comment or post; that image shall contain the term "FARA," the registrant's registration

number, and an electronic link to the registrant's filings on the Department's FARA website. The conspicuous statement in the embedded image must be in a font size and color that are easy to read and that stand out against the background.

(g) Internet website or platform for which registrant does not have administrative rights. Informational materials posted by a registrant on an internet platform or website, which is not hosted or controlled by the registrant, or for which the registrant does not otherwise have administrative rights, shall include the conspicuous statement as set forth in section 4(b) of the Act and paragraphs (a) and (b) of this section. Each individual post to the website for or in the interests of the registrant's foreign principal shall bear the conspicuous statement, with a hyperlink to the registrant's filings on the Department's FARA website. If the internet platform or website does not provide sufficient space for the full conspicuous statement, as set forth in section 4(b) of the Act and paragraph (a) of this section, the registrant or anyone acting on the registrant's behalf must include in each comment or post on the internet platform or website an embedded image of the conspicuous statement on the face of the comment or post along with the term "FARA" with the registrant's registration number containing an electronic link to the registrant's filings on the Department's FARA website. The conspicuous statement in the embedded image must be in a font size and color that are easy to read and that stand out against the background.

#### **Notification Requirement for "Political Propaganda"—28 C.F.R. § 5.401(h)**

(h) For the purpose of section 4(e) of the Act:

(1) The term "political propaganda" has the same meaning as "informational materials," the labeling of which is governed by paragraphs (a) through (g) of this section;

(2) Any "request" made to any agency or official of the Government for or in the interests of a foreign principal includes all communications related to that request even if the communication itself does not contain a specific request for information or advice within the meaning of section 4(e); for example, all communications, oral or written, involved in scheduling a meeting to discuss the requested information or advice must be prefaced with or accompanied by a true and accurate statement to the effect that such a person is registered as an agent of a foreign principal, as required by section 4(e);