



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

November 13, 2023

Via E-mail

[Name]

[Address]

Re: Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Name]:

We write in response to your e-mails dated September 26, 2023 (“September 26 E-mail”), and October 12, 2023 (“October 12 E-mail”),¹ requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to your obligation to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with certain proposed activities of [U.S. Company], on behalf of [Foreign Person]. Based upon the representations in your e-mails and the engagement letter you provided, we do not oppose your request for the exemption from registration pursuant to Section 613(h) of the Act, once [U.S. Company] has filed a valid Lobbying Disclosure Act (“LDA”)² registration for its representation of [Foreign Person].

I. Background

According to the September 26 E-mail, your company, [U.S. Company], was recently retained to assist [Foreign Person], a [Foreign Country] national and private citizen who resides in [Foreign Country 2]. [U.S. Company] was retained to investigate the causes behind claimed travel “irregularities” encountered by [Foreign Person] and [Foreign Person’s] family during their international travel to the United States. According to details provided in the October 12 E-mail describing the “irregularities,” several years ago, [Foreign Person] and [Foreign Person’s Spouse], who is also a [Foreign Country] national, had their U.S. visas revoked and later, reinstated. Following reinstatement, [Foreign Person’s Spouse] has repeatedly been directed to secondary screening upon arrival in the United States on commercial flights and questioned about past criminal activity. You informed us in the October 12 E-mail that [U.S. Company] plans to assist the [Foreign Person’s] family with the [U.S. Government Agency’s] [U.S. Government Program]

¹ On September 26, 2023, you provided a copy of the signed engagement letter between [U.S. Company] and [Foreign Person].

² 2 U.S.C. § 1601 *et seq.*

and to perform outreach to [U.S. Government] officials regarding [U.S. Government Program] inquiries.³

You ask whether [U.S. Company] is required to register under FARA and whether it is entitled to the exemption for LDA registrants set out at 22 U.S.C. § 613(h).

II. FARA Analysis

A person is an “agent of a foreign principal” who, absent an exemption, must register under FARA if such person acts “in any . . . capacity at the order, request, or under the direction or control of a foreign principal” and engages in one of the enumerated activities requiring registration.⁴ Among the activities requiring registration are engaging in “political activities”⁵ and “represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.”⁶ The term “foreign principal” is defined as including “a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States.”⁷ According to this definition, as [Foreign Country] nationals residing in [Foreign Country 2], [Foreign Persons] are foreign principals for the purposes of FARA.

Thus, evaluating whether a person⁸ is an agent of a foreign principal required to register under FARA is a two-part inquiry, exploring (1) the nature of the relationship between the agent and the foreign principal, that is, whether there is evidence that the agent is acting directly or indirectly at the order, request, or under the direction or control of the foreign principal and (2) whether the agent has performed one of the enumerated activities within the United States for or in the interests of the foreign principal.⁹ If [U.S. Company’s] proposed activities satisfy both elements of the

³ Although interactions with members of Congress and/or their staff were listed as potential activities in the engagement letter provided with your submission, you informed us in your October 12 E-mail that [U.S. Company] does not anticipate interacting with members of Congress or their staffs.

⁴ See 22 U.S.C. § 611(c)(1).

⁵ The term “political activities” means “any activity that the person engaging in believes will, or that 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.” 22 U.S.C. § 611(o).

⁶ 22 U.S.C. § 611(c)(1)(i) and (iv).

⁷ 22 U.S.C. § 611(b)(2).

⁸ “The term ‘person’ includes an individual, partnership, association, corporation, organization, or any other combination of individuals.” 22 U.S.C. § 611(a).

⁹ 22 U.S.C. § 611(c)(1).

inquiry, an obligation to register may exist.

As to the first part of the inquiry, the engagement letter submitted with your September 26 E-mail provides ample evidence of direction and control over your activities by [Foreign Person]. FARA's implementing regulations construe "control" broadly, to include "the possession or the exercise of 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."¹⁰ In the instant case, [U.S. Company] is to receive a \$60,000 fee in exchange for enumerated services for the benefit of the [Foreign Persons] family.¹¹

As to the second part of the inquiry, the activities that [U.S. Company] has agreed to perform under the contract, namely, inquiring as to the implementation of the [U.S. Government] program as it applies to the [Foreign Persons] family with [U.S. Government Agency] appear to fall under Section 611(c)(1)(iv) of the Act because [U.S. Company] would be "within the United States represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States."¹²

However, even when agency under FARA is established, an agent of a foreign principal may still qualify for one of the exemptions set out in 22 U.S.C. § 613. The burden of establishing an exemption "shall rest upon the person for whose benefit the exemption is claimed."¹³

Section 613(h) provides an exemption from registration where an agent representing a foreign person or entity "has engaged in lobbying activities and has registered under the [LDA] in connection with the agent's representation of such person or entity."¹⁴ FARA's implementing regulations cabin the scope of the exemption, stating, "In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized."¹⁵ In this case, where the foreign principal is not a foreign government or foreign political party, this limitation is not applicable.

¹⁰ 28 C.F.R. § 5.100(b).

¹¹ The FARA Unit noted in an October 12 follow-up e-mail to you that the engagement letter also contained a \$50,000 "incentive/bonus" payment to [U.S. Company] which, if [U.S. Company] were required to register, would most likely have been in violation of FARA. 22 U.S.C. § 618(h).

¹² 22 U.S.C. § 611(c)(1)(iv). Because [U.S. Company's] activities qualify for the LDA exemption, we need not reach a conclusion about whether [U.S. Company] will be engaging in political activities, as defined by the Act. *See* 28 C.F.R. § 5.100(e) (noting that FARA's definition of political activities "do[es] not include making a routine inquiry of a government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question").

¹³ 28 C.F.R. § 5.300.

¹⁴ 22 U.S.C. § 613(h).

¹⁵ 28 C.F.R. § 5.307.

Requester
November 13, 2023
Page 4

Accepting your representations as true and accurate, we do not oppose your assertion that the LDA exemption in Section 613(h) applies to the activities described in the September 26 and October 12 E-mails.

Please note that [U.S. Company's] entitlement to the exemption is contingent upon it having filed a registration under the LDA for the conduct described in the September 26 and October 12 E-mails. Further, this advisory opinion is based entirely upon and limited to the facts set out in the September 26 and October 12 E-mails. Should any of the facts and/or circumstances described to us change in any way, please notify the FARA Unit so that we can revisit our determination as necessary.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact the FARA Unit at (202) 233-0776 or by e-mail to FARA.Public@usdoj.gov if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit