



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 12, 2022

Via E-mail

[Requestor]

[Address redacted]

[Email address redacted]

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

Dear [Requestor]:

This is in reference to your letter of December 6, 2021 (“the December 6 Letter”), received by this office on December 14, 2021, in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding your possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”) for activities you will engage in as Vice President for Government Relations pursuant to a proposed contract with the [foreign university]. Based on our review of your request as well as the additional information you provided at our request in a telephone conversation with a member of our Unit and an email message, both on January 10, 2022, we have determined that you would be obligated to register under FARA for the proposed activities to be undertaken on behalf of the [foreign university] as described in your submission.

In the December 6 Letter, you informed us that [foreign university] is a non-profit, private educational institution that will begin operation in 2022. You further informed us that [foreign university] will be financed entirely by a wealthy [foreign family based in a foreign country], and that [foreign university] will receive no funding from the [foreign government] nor the United States. You stated that your work will be based in the United States with regular travel to [foreign country]. In response to our request for additional information concerning this request, you provided a copy of the contract you signed on January 6, 2022, as well as the final draft of the job description. The job description provided that you will:

- (1) manage relationships with key White House, State Department, Cabinet departments, agencies, and other executive branch officials in the U.S.;
- (2) develop, maintain, and oversee [foreign university]’s congressional relationships;
- (3) conduct outreach and advocacy to promote [foreign university]’s mission, goals, and financial priorities;
- (4) develop and implement strategies for expanding [foreign university]’s reputation and presence in Congress, the executive branch, and across the country, including programs or communications to generate interest from elected officials;
- (5) monitor legislation moving through Congress with relevance to the [foreign university] to

understand how it can benefit and impact [foreign university].

In the December 6 Letter, you further provided that you would:

- (6) assist [foreign university] in its relations with the U.S. government, including determining what kinds of Department of State grant monies could be available for [foreign university] programs and assisting with the application process;
- (7) track any grant funding through meetings with members of the executive and legislative branches in Washington, DC; and,
- (8) identify potential candidates living in the U.S. who might be appropriate members of the University's future board.

You inquired whether these activities would trigger a registration requirement.

Generally speaking, save certain exemptions, a party is an "agent of a foreign principal" that must register under FARA if it acts "in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person," and within the United States:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

See 22 U.S.C. § 611(c)(1).

The [foreign university] is a "foreign principal" as defined by the Act, 22 U.S.C. § 611(b)(3), as it is a corporation or organization organized under the laws of a foreign country and with its principal place of business in [foreign country]. In undertaking the above-described contractual activities as Vice President of Governmental Relations of [foreign university], you will clearly be acting "at the order, request, or under the direction or control, of a foreign principal," 22 U.S.C. § 611(c)(1).¹

¹ FARA's implementing regulations, at 28 C.F.R. § 5.100(b), provides that "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 activities of a person, whether through the ownership of voting rights, by contract, or otherwise." (emphasis added).

We have determined that you would be acting as an agent of the foreign principal, [foreign university], in representing its interests with and advocating before officials with agencies of the U.S. government. *See*, 22 U.S.C. § 611(c)(1)(iv). The provided job description notes you will both “[m]anage[] relationships with key White House, State Department, Cabinet departments, agencies and other executive branch officials in the USA” and, as to congressional engagement, “[d]evelop outreach and advocacy for [foreign university]’s mission, goals, and financial priorities.” In the telephone conversation on January 10, 2022, you acknowledged that in those meetings and discussions with officials of the U.S. government agencies and departments, you expect that you will advocate that grant programs be available to [foreign university] from the Department of State and other U.S. government agencies. In that regard, you offered that one example of the kind of grant money of interest to the [foreign university] is the [grant for foreign education] that was available from the U.S. Department of State last spring, and stated that, if such monies were to become available again, you would be expected to advise the university to apply. To the extent that your representation of [foreign university] before U.S. government officials will include advocating that specific grant moneys be made available to [foreign university], rather than merely assisting [foreign university] in applying for existing grant programs, you would be engaged in political activities as an agent of [foreign university].

Such advocacy for grant funding from the U.S. government for [foreign university] would constitute “political activities” because it is undertaken with an intent to influence the U.S. government “with reference to formulating, adopting, or changing the domestic or foreign policies of the United States[.]”² *See* 22 U.S.C. §611(c)(1)(o). The regulations implementing FARA provide that the terms “formulating, adopting, or changing,” as used in the definition of “political activities” outlined in the Act, include “any activity which seeks to maintain any existing domestic or foreign policy of the United States.” 28 C.F.R. § 5.100(e). Thus, absent an exemption, you would be required to register under FARA as an agent of [foreign university].

You asked whether your activities on behalf of [foreign university] qualify for the exemption set forth in the Act which exempts from the registration requirement, “any person engaging in or agreeing to engage *only* in activities in furtherance of bona fide . . . scholastic [or] academic pursuits.” 22 U.S.C. §613(e) (emphasis added). As discussed above, because your activities for [foreign university] would involve political activities by engaging with U.S. government officials to advocate for grant money from the U.S. government, such activities are not limited *only* to scholastic or academic matters, and thus you do not qualify for this exemption and are required to register under FARA.

² The Act defines “political activity” as “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.” 22 U.S.C. § 611(o).

[Requestor]
January 12, 2022
Page 4 of 4

Please effectuate your registration within the next thirty (30) days. If you have any questions regarding this matter, please contact [Redacted] by telephone at (202) 233-0776.

Sincerely,

/s/Jennifer Kennedy Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit