



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 14, 2024

Via E-mail

[Requestor Name]

[Address]

Re: [Corporate Entity]

Dear [Requestor Name]:

Thank you for your phone call with us on December 7, 2023, and your e-mail on December 8, 2023, concerning your client, [Corporate Entity] (“[Corporate Entity]”). We appreciate your efforts to clarify [Corporate Entity’s] position on why it should be exempt from registration under Section 613(d)(2) of the Foreign Agents Registration Act (“FARA”) concerning activities it performed relating to a grant it received from [Foreign Entity] (“[Foreign Entity]”).

As you know, on September 22, 2023, the FARA Unit issued an Advisory Opinion in this matter opposing [Corporate Entity’s] claim that the LDA exemption of FARA applied to [Corporate Entity’s] activities on behalf [Foreign Entity] and concluding that [Corporate Entity] must register under FARA.¹ In response, on October 31, 2023, [Corporate Entity] raised the additional claim that it should be exempt from registration under Section 613(d)(2) of FARA, which exempts “[a]ny person engaging or agreeing to engage only . . . in . . . activities not serving predominantly a foreign interest[.]”²

In response to this claim and based on the information then available to the FARA Unit, the FARA Unit sent a letter to [Corporate Entity’s Counsel] on November 22, 2023, opposing [Corporate Entity’s] claim that Section 613(d)(2) applies to [Corporate Entity’s] activities on behalf of [Foreign Entity]. Among other things, that letter stated that while nonprofits are not precluded from claiming the exemption under Section 613(d)(2), [Corporate Entity] had not met its burden of establishing that the exemption applies.³ The FARA Unit’s letter explained that although [Corporate Entity’s] activities may also serve [Corporate Entity’s] interests in its own [Redacted], the activities appeared to predominantly serve [Foreign Entity’s] interests, given that [Foreign Entity] awarded the grant to [Corporate Entity] contingent on [Corporate Entity] using the grant

¹ [Corporate Entity] did not argue in its advisory opinion request that the exemption under Section 613(d)(2) applied to its activities on behalf of [Foreign Entity].

² 22 U.S.C. § 613(d)(2).

³ See 28 C.F.R. § 5.300 (“The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.”).

funds for [Foreign Entity's] purposes and based on [Corporate Entity's] representations that it would engage in the specified activities. We noted that this conclusion followed even if [Corporate Entity's] activities on behalf of [Foreign Entity] were not directed by and did not directly promote the public or political interests of a foreign government or foreign political party.

However, in our December 7 phone call with you and your December 8 e-mail, you argued that we should reconsider our opposition to [Corporate Entity's] claim that it is exempt from registration under Section 613(d)(2). You argued that Section 613(d)(2) exempts [Corporate Entity] from registration because [Corporate Entity's] activities were neither directed by nor intended to promote the interests of a foreign government or foreign political party and were not serving predominantly a foreign interest. You also provided further information about [Corporate Entity's] activities and relationship with [Foreign Entity]. You stated, for example, that the \$[Redacted] [Foreign Entity] grant "[Redacted]." In addition, you disclosed the following information, [Redacted]:

- [Redacted] fits within [Corporate Entity's] organizational mission.
- [Corporate Entity's] activities connected with the [Redacted] reflect only [Corporate Entity's] own organizational viewpoints, goals, and directives.
- [Corporate Entity] does not represent the views of any grantor or hold itself out as representing any grantor.
- [Corporate Entity] personnel are not directed or controlled by any grantor.
- [Corporate Entity's] [Redacted] remains ongoing even though the funding under the [Foreign Entity] grant to [Corporate Entity] lapsed in [Redacted].
- [Redacted] between [Corporate Entity] and [Foreign Entity] was necessary because [Redacted].
- [Foreign Entity] did not dictate any of the described methods or milestones provided in [Redacted].
- [Redacted] allows [Corporate Entity] to conduct [Redacted].
- [Redacted].

This information you provided, along with the information [Corporate Entity] disclosed in its advisory opinion request and initial request to be exempt from registration under Section 613(d)(2), indicates that [Corporate Entity's] activities relating to the [Foreign Entity] grant were directly in furtherance of the objectives of [Corporate Entity's] [Redacted]. Moreover, the information suggests that [Corporate Entity's] activities were not significantly influenced by [Foreign Entity]. The additional information you provided also demonstrates that [Corporate Entity's] activities were not directed by and did not directly promote the public or political interests of a foreign government or foreign political party.⁴ For these reasons, we will not contest your assertion that [Corporate Entity's] activities did not predominantly serve a foreign interest, and therefore that [Corporate Entity] is exempt from registration under Section 613(d)(2) concerning those activities.

⁴ See 28 C.F.R. § 5.304(c).

[Requestor Name]

[Requestor Firm]

March 14, 2024

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If you have any questions, please contact [FARA Unit Trial Attorney] or [FARA Unit Trial Attorney].

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

November 22, 2023

Via E-mail

[Requestor Name]

[Address]

Re: Exemption to FARA Registration – 22 U.S.C. § 613(d)(2)

Dear [Requestor's Name]:

We write in response to your October 31, 2023, letter contending that Section 613(d)(2) of the Foreign Agents Registration Act¹ (“FARA”) exempts your client, [Corporate Entity] (“[Corporate Entity]”), from registering as an “agent of a foreign principal” under FARA for activities it is engaging in on behalf of [Foreign Entity] (“[Foreign Entity]”). As your letter indicates, on September 23, 2023, the FARA Unit issued an Advisory Opinion, at your request,² explaining that [Corporate Entity] must register for those activities and that it could not avail itself of the LDA exemption under Section 613(h) of FARA unless it had filed a valid LDA registration for its specific representation of [Foreign Entity].³ We have reviewed your letter and do not agree with your argument that Section 613(d)(2) applies in this matter.

Section 613(d)(2) exempts from registration “[a]ny person engaging or agreeing to engage only . . . in other activities not serving predominantly a foreign interest.”⁴ In relevant part, Section 5.304(c) of FARA’s regulations states that “a person engaged in political activities on behalf of a foreign corporation . . . will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation[.]”⁵ According to FARA’s regulations, “[t]he burden of establishing the availability of an exemption . . . shall rest upon the person whose benefit the exemption is claimed.”⁶

¹ 22 U.S.C. §§ 611-621.

² Your request for an advisory opinion was received by the FARA Unit on August 7, 2023. You supplemented the request on August 23, 2023.

³ See U.S. Dep’t of Just. FARA Unit, ADVISORY OP. PURSUANT TO 28 C.F.R. § 5.2 (Sept. 23, 2023), at 4.

⁴ 22 U.S.C. § 613(d)(2).

⁵ 28 C.F.R. § 5.304(c).

⁶ 28 C.F.R. § 5.300.

[Requestor Name]
[Requestor Firm]
November 22, 2023
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While nonprofits are not precluded from claiming the exemption Section 613(d)(2), [Corporate Entity] has not met its burden of establishing that the exemption applies to its activities on behalf of [Foreign Entity]. As our Advisory Opinion explained, [Corporate Entity's] activities in connection with the \$[Redacted] grant from [Foreign Entity] constitute "political activities" and representing [Foreign Entity's] interests before U.S. government officials and agencies under FARA.⁷ These activities are neither commercial in nature nor directly in furtherance of [Foreign Entity's] bona fide commercial, industrial, or financial operations.⁸ Rather, they are political in nature and directly in furtherance of [Foreign Entity's] political or public interests. Although these political activities may also serve [Corporate Entity's] own interests in its [Redacted], as your letter asserts, they *predominantly* serve [Foreign Entity's] interests, given that [Foreign Entity] awarded the grant to [Corporate Entity] contingent on [Corporate Entity] using the grant funds for [Foreign Entity's] purposes and based on [Corporate Entity's] representations that it would engage in the specific activities at issue. This is true even if, as you suggest, [Corporate Entity's] activities on behalf of [Foreign Entity] are not being directed by or directly promoting the public or political interests of a foreign government or foreign political party.⁹ For these reasons, [Corporate Entity] cannot avail itself of Section 613(d)(2).¹⁰

Please complete the registration process for [Corporate Entity] within 10 days of the date of this letter.

If you have any questions, please contact [FARA Unit Trial Attorney] or [FARA Unit Trial Attorney]. Thank you for your cooperation.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

⁷ See *supra* note 3, at 3.

⁸ See 28 C.F.R. § 5.304(a) ("As used in section 3(d), the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.").

⁹ See 28 C.F.R. § 5.304(c).

¹⁰ See S. REP. NO. 89-143 at 12 (1965) ("[P]olitical activities intended to influence US policies, primarily on behalf of a foreign interest, should be subject to public scrutiny and the exemption does not apply.").



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 22, 2023

Via E-mail

[Requestor Name]

[Address]

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

Dear [Requestor Name]:

I write in response to your August 7, 2023, letter (“Letter”), as supplemented on August 23, 2023, requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), on whether the [Corporate Entity] (“[Corporate Entity]”) must register as an “agent of a foreign principal” under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA”), for certain activities it has been performing and continues to perform on behalf of the [Foreign Entity] (“[Foreign Entity]”). Based on the representations in your Letter and its supporting documents, and for the reasons discussed below, we have determined that [Corporate Entity] has an obligation to register under FARA.

I. Background

In your Letter, you describe [Corporate Entity] as [Redacted] advocacy organization. According to its website, [Corporate Entity] is incorporated and headquartered in [Corporate Entity Location].¹ You explain that [Corporate Entity]’s work is multi-national and includes a program called [Redacted], which “[Redacted].”

You state in your Letter that the [Redacted] is funded, in part, through a grant that [Corporate Entity] received from “[Redacted].”² According to its website, [Foreign Entity] is a registered [Redacted] headquartered in [Foreign Country].³ On August 23, 2023, you provided us copies of the grant agreement and supporting documents (collectively, the “Grant Agreement”), which delineate, among other things, the terms and conditions of the grant and the guidelines that [Foreign Entity] asked [Corporate Entity] to meet to receive funding.

¹ See [Corporate Entity Website].

² [Foreign Entity]’s website indicates that [Redacted]. See [Foreign Entity Website].

³ See [Foreign Entity Website].

According to the Grant Agreement and your Letter, [Foreign Entity] awarded a grant of \$[Redacted] to [Corporate Entity], which covered the period [Redacted], and was to be disbursed in [Redacted] installments. The Grant Agreement states that the grant objective is “[Redacted].” Further, the Grant Agreement notes that the geographic focus of the grant objective includes the United States. The Grant Agreement and your Letter indicate that [Corporate Entity] will further the grant objective by, among other things, (1) focusing U.S. decision-makers and investors, including the [Redacted], and (2) encouraging the current U.S. administration to implement [Redacted]. In your Letter, you comment that the grant contemplates [Corporate Entity] “[Redacted].”

You state in your Letter that [Corporate Entity] has “[Redacted].” Further, you note that [Corporate Entity] has “[Redacted].”

In your Letter, you explain that the \$[Redacted] grant is one of [Redacted] grants that [Foreign Entity] awarded [Corporate Entity] in support of [Redacted]. You describe the other [Redacted] grants as “[Redacted]” from [Corporate Entity] fiscal years [Redacted] and indicate that [Corporate Entity] received funds for those grants totaling [Redacted]. Regarding the [Redacted] grant, you note that “[Redacted].” You state that your advisory opinion request focuses only on the \$[Redacted] grant “[Redacted].”

According to your Letter, [Corporate Entity] believes that it is exempt from FARA registration for its work under all [Redacted] grants based on 22 U.S.C. § 613(h), which exempts agents of certain foreign principals who have engaged in lobbying activities and have registered under the LDA. You state in your Letter that [Corporate Entity] has been registered under the LDA “Redacted” since [Redacted], and has “[Redacted].” Additionally, you assert that “[Redacted].” You enclosed with your Letter a copy of [Corporate Entity]’s completed [Redacted], LDA registration form. Notably, the form [Redacted].

II. FARA Analysis

FARA defines a “foreign principal” to include entities “organized under the laws of or having [their] principal place of business in a foreign country.”⁴ Because [Foreign Entity] is organized under the laws of [Foreign Country] and has its principal place of business there, it is a “foreign principal” under FARA.

FARA defines an “agent of a foreign principal” to include “any person who acts . . . at the order, request, or under the direction or control of a foreign principal” and, within the United States, among other things, “engages in . . . political activities”⁵ or “represents the interests of such foreign principal before any agency or official of the Government of the United States[.]”⁶ FARA defines

⁴ 22 U.S.C. § 611(b)(3).

⁵ 22 U.S.C. § 611(c)(1)(i).

⁶ 22 U.S.C. § 611(c)(1)(iv).

a “person” to include corporate entities,⁷ and its regulations define “control” and its variants to include “the possession or the exercise of power, directly or indirectly, to determine the policies or activities of a person, whether . . . by contract, or otherwise.”⁸ FARA further defines “political activities” to include:

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[.]⁹

For FARA purposes, therefore, [Corporate Entity] is a “person” acting under [Foreign Entity]’s direction or control, given that [Corporate Entity] is a corporate entity that is performing work for [Foreign Entity] according to the terms, conditions, and guidelines that [Foreign Entity] prescribed in the Grant Agreement. Moreover, [Corporate Entity]’s activities within the United States on behalf of [Foreign Entity] qualify as “political activities” because they include efforts to influence U.S. government officials and sections of the U.S. public—[Redacted]. In addition, [Corporate Entity]’s U.S. government outreach activities in the United States, which include [Redacted], also constitute representing [Foreign Entity]’s interests before U.S. government agencies and officials.¹⁰ As a result, [Corporate Entity] is an “agent of a foreign principal” under FARA.

Section 613(h) of FARA exempts from registration any agent of a foreign entity, as described in Section 611(b)(3), “if the agent has engaged in lobbying activities and has registered under the [LDA] *in connection with the agent’s representation of such . . . entity.*”¹¹ FARA’s regulations state that the LDA exemption does not apply in any case “where a foreign government or foreign political party is the principal beneficiary[.]”¹² The person claiming the LDA exemption has the burden of establishing its availability¹³ and proving that registration under the LDA has been made.¹⁴

⁷ 22 U.S.C. § 611(a).

⁸ 28 C.F.R. § 5.100(b).

⁹ 22 U.S.C. § 611(o).

¹⁰ To the extent [Corporate Entity]’s activities include providing information “with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions” of [Foreign Entity], [Corporate Entity] would also qualify as an “information-service employee” under FARA. *See* 22 U.S.C. §§ 611(c)(1)(ii), 611(i).

¹¹ 22 U.S.C. § 613(h) (emphasis added).

¹² 28 C.F.R. § 5.307.

¹³ 28 C.F.R. § 5.300.

¹⁴ 28 C.F.R. § 5.307.

[Requestor Name]
[Requestor Firm]
September 22, 2023
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Your Letter informs us that [Corporate Entity] is engaged in lobbying activities on behalf of [Foreign Entity], that no foreign government or foreign political party is the principal beneficiary of those activities, and that [Corporate Entity] has been registered under the LDA throughout the duration of its agency relationship with [Foreign Entity]. But the LDA registration form for [Corporate Entity] that you provided, which is dated [Redacted], makes no mention of [Foreign Entity]. While the burden of proving a valid registration falls on [Corporate Entity], a search of the U.S. Senate's publicly available LDA database did not immediately reveal a registration expressly covering [Corporate Entity]'s lobbying activities for [Foreign Entity]. A review of [Corporate Entity]'s recent publicly available quarterly lobbying reports likewise did not reveal these activities. Without a valid LDA registration *for its specific representation of [Foreign Entity]*, the LDA exemption is unavailable and [Corporate Entity] must register under FARA for its work on behalf of [Foreign Entity].

Our analysis applies *only* to activities arising from [Corporate Entity]'s pending \$[Redacted] grant from [Foreign Entity], not to activities performed under the [Redacted] completed grants that [Corporate Entity] received from [Foreign Entity] in [Redacted], as FARA regulations preclude advisory opinion requests involving only past conduct.¹⁵ Nevertheless, the facts and circumstances reflected in your Letter and its supporting documents suggest that [Corporate Entity] may have the same FARA registration obligation for the [Redacted] completed grants as it does for the pending grant. Accordingly, [Corporate Entity] should consider whether it also has a registration obligation under FARA in connection with its activities pursuant to the [Redacted] grants.

Please complete the registration process for [Corporate Entity] within 30 days of the date of this letter.

This advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein, and the requirements of FARA and its regulations. If there are any changes in the facts and circumstances you related to us, you should contact us immediately.

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

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

¹⁵ 28 C.F.R. § 5.2(b) (prohibiting ex post facto review requests).