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# **Navigating the Law:** **Foreign Agents Registration Act (FARA) Handbook**

Daniel B. Pickard, Shareholder, Chair,  
International Trade & National Security Practice Group

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Until recently, the Foreign Agents Registration Act (FARA) was a little-known law even within the DC Beltway. However, several charges against high-profile individuals have thrust the law into the spotlight as the U.S. Department of Justice (DOJ) has begun taking a stronger stance on compliance.

It is widely recognized that we are currently in a new FARA enforcement era, which potentially entails significant risks for individuals engaged in certain covered activities for non-U.S. entities. Indeed, it is vital that any entity working for or on behalf of foreign individuals, companies, and governments in political or quasi-political activities in the U.S. review the requirements of the statute and have experienced counsel behind them to help navigate the nuances of the law.

## THE BASICS

FARA is primarily a disclosure statute that requires individuals and entities operating in the U.S., and who are engaged in certain political and quasi-political activities on behalf of foreign principals, to make public disclosures regarding their relationships with the DOJ. The law is administered by the FARA Registration Unit

of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) of the DOJ. Essentially, those acting as “agents of a foreign principal” in the U.S. must register their relationship with the DOJ. However, there are some exemptions.



## Who Is Covered?

Under FARA, an “agent of a foreign principal” includes any person or entity that acts as a representative or employee, or otherwise acts at the order, request, or under the direction or control of a “foreign principal” (or is financed in whole or major part by a foreign principal) and does any of the following:

- Engages in political activities within the U.S., such as intending to influence any U.S. government official or the American public regarding domestic or foreign policy or the political or public interests of a foreign government or foreign political party
- Acts as a public relations consultant, publicity agent, information service employee, or political consultant within the U.S.
- Solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value within the U.S.
- Represents the interests of a foreign principal before U.S. government officials or agencies

The broad array of activities that may trigger FARA registration requirements becomes even more expansive when considering how the law defines “political activities.” Under FARA, political activities are defined 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 or a foreign political party.”

While the DOJ has further clarified the broad nature of the “political activities” definition through recent advisory opinions, it stands that actions taken on behalf of a foreign entity within the U.S. that in some manner have the potential to influence domestic or foreign policy may trigger FARA’s registration requirements.



Another point of complexity is FARA’s broad definition of a “foreign principal” to include not only foreign government and political parties, but also persons and organizations outside of the U.S. as well as corporations and entities organized under the laws of or having their principal place of business in a foreign country.

When read together, the scope and reach of FARA’s applicability is expansive and could include a wide range of activities conducted on behalf of foreign governments, political parties, and/or organizations, including for example: lobbying U.S. government officials, activities undertaken to promote the U.S. public’s perception of a foreign government or entity, or even providing a forum for foreign officials to promote their programs and ideologies.

## Who Is Exempt?

Given its expansive coverage, the statutory exemptions to the act's reporting requirements play a key role in determining whether activities contemplated by an organization may be covered by FARA. Even if an activity might otherwise trigger a reporting requirement under the act, an exemption may apply to relieve an organization of the reporting requirements. Specifically, FARA provides exemptions for the following persons/activities:

- Diplomatic or consular officers of a foreign government recognized by the Department of State
- Bona fide commercial activity and other activity not serving predominantly a foreign interest
- Humanitarian fundraising
- Religious, scholastic, academic, fine arts, or scientific pursuits
- Legal representation of a disclosed foreign principal before any court of law or agency of the U.S. government
- Properly registered non-governmental principals under the Lobbying Disclosure Act (LDA)

While it is the responsibility of a person or entity subject to FARA to determine whether they are subject to the registration requirement, a party can submit a request for an Advisory Opinion to determine if certain contemplated activities are exempt from registration.

## REPORTING AND REGISTRATION

In cases where the contemplated activities trigger FARA's reporting requirements and an exemption does not apply, the individual or entity is required to file an initial registration statement, some short form statements, and supplemental statements with the DOJ. Additionally, agents of foreign principals must submit "informational materials" to the DOJ.

### Initial Registration

FARA mandates an initial registration statement to be filed within 10 days of an individual or entity having agreed to act as an agent on behalf of a foreign principal, and that they cannot begin acting as an agent before registering. Initial registration requires individuals or entities to disclose certain information around the relationship including:

- Identity of the agent (including its corporate structure, where applicable)
- List of all partners, officers, and directors
- List of all individuals who will render services for the individual/entity in the interest of the foreign principal
- Identity of the foreign principal
- Detailed statement of the activities in which the individual/entity plans to engage on behalf of the foreign principal
- Certain contributions and disbursements related to the contemplated relationship
- Copy of the contract between the agent and the foreign principal, if one exists





## Short Form Registration

As an additional step, every partner, officer, director, associate, employee, and agent of a registrant who acts in furtherance of the interests of the foreign principal must file a short form registration statement. This is not required if an individual is engaged solely in clerical, administrative or similar duties. Any time there are changes to the information submitted in the short form registration or to a relevant employee's compensation, a new filing is required within 10 days of the event.

## Supplemental Registration Statements

FARA requires that registrants file a supplemental statement every six months. The supplemental statement is due 30 days after the six-month reporting end date. Like the initial registration statement, supplemental statements require that each person includes updated information regarding, for example:

- Detailed description of any activities or services performed in furtherance of the agency relationship within the prior six-month reporting period
- Any changes in the agent's management and/or personnel
- Any monies or things of value received or disbursed in connection with the agency relationship
- Information regarding any "informational materials" disseminated by the agent in furtherance of its representation of the foreign principal

## Filing Requirements for "Informational Materials"

Each FARA registrant is required to file with the DOJ any "informational materials" distributed in the course of the agency relationships. Those are defined as any items, both physical and electronic, that an agent disseminates to two or more people on behalf of the foreign principal, which can include posters,

brochures, social media posts, broadcasts, and videos. Informational materials must be filed with the FARA unit within 48 hours of dissemination.

While FARA does not limit or regulate the content of informational materials, it does require that inclusion of the certain labeling. The suggested labeling is as follows: This material is distributed by [name of registrant] on behalf of [name of foreign principal]. Additional information is available at the Department of Justice, Washington, DC.

## Recordkeeping Requirements

Registered agents under FARA are required to maintain all records of activities while acting as an agent of a foreign principal up to three years after the termination of the agency relationship. Records must be readily available for DOJ inspection, which is authorized under FARA in order to better understand the activities conducted on behalf of foreign principals and to confirm the filings of registrants.

Specific records that must be maintained include:

- All correspondence, memoranda, and other written communications to and from all foreign principals and all other persons relating to the registrant's activities on behalf of, or in the interest of, any of its foreign principals
- Original copies of all written contracts between the registrant and any of their foreign principals
- Records containing the names and addresses of persons to whom informational materials have been distributed
- All financial records relating to the registrant's activities on behalf of the foreign principal
- Names and addresses of all employees and agents of the registrant

These records must also be made available for inspection by the NSD and Federal Bureau of Investigation upon request.



### Potential Penalties for Non-compliance

If an agent intentionally and willfully violates any provision of FARA, the DOJ may impose criminal penalties including fines up to \$10,000, up to five years of imprisonment, or both. Agents that willfully make false statements or intentionally fail to provide the required registration statements may be subject to the same penalties.

## RECENT DEVELOPMENTS IN FARA ENFORCEMENT

The recent increased enforcement of FARA from the Department of Justice highlights its renewed commitment to transparency by investigating and convicting individuals for FARA violations – including amongst the most high-profile and esteemed individuals.

### Recent Enforcement Actions

**DOJ v. Stephen A. Wynn:** In May 2022, the DOJ filed a civil enforcement action in the U.S. District Court for the District of Columbia to compel Stephen A. Wynn, a U.S. businessman and hotelier who previously served as the CEO of Wynn Resorts, to register under FARA as an agent of the People’s Republic of China (PRC) and a senior official of the PRC’s Ministry of Public Security (MPS). According to the complaint, Wynn contacted then-U.S. President Donald Trump and members of his administration from at least June to August 2017 to convey the PRC’s request to cancel the visa or otherwise remove from the U.S. a Chinese businessman charged with corruption seeking political asylum in the U.S. It was alleged that Wynn was acting as an agent to Sun Lijun, then-Vice Minister of the MPS, and conveyed the request directly to President Trump. In October 2022, the U.S. District Court for the District of Columbia granted Wynn’s motion to dismiss the civil suit, concluding that any agency relationship that existed between Wynn and the PRC had been terminated before the DOJ filed the suit.

**DOJ v. Elliott Broidy:** In 2020 in D.C., Elliott Broidy pled guilty to one count of conspiracy to violate FARA. The settlement arose from Broidy agreeing to lobby senior U.S. government officials on matters pending before the DOJ on behalf of Chinese and Malaysian interests in exchange for millions of dollars. Broidy allegedly sought to lobby the highest levels of the U.S. government to deport a dissident of the PRC living in the U.S. all while concealing the foreign principals he represented. As part of his plea agreement, Broidy forfeited the proceeds realized while serving as an unregistered agent.

### **DOJ Investigation of John R. Allen and Richard G. Olson:**

In 2022, the DOJ successfully obtained a search warrant from the U.S. District Court for the Central District of California to investigate the records of John R. Allen, a retired four-star Marine General who commanded all American troops in Afghanistan, and Richard G. Olson, former U.S. Ambassador to the United Arab Emirates and Pakistan who eventually pled guilty to related charges of undisclosed lobbying. The search warrant alleged that General Allen met with top Qatari and American officials to diffuse an impending crisis between members of the Persian Gulf states – notably Saudi Arabia, Qatar, and the United Arab Emirates. General Allen had finished his service with the military and allegedly agreed to travel to Doha for a fee, meet with American officials, including members of Congress, and the national security adviser on behalf of Qatar.

### **DOJ v. Skadden, Arps, Slate, Meagher & Flom**

**LLP:** In 2019, the U.S. law firm Skadden, Arps, Slate, Meagher & Flom LLP entered into a settlement agreement resolving its liability for alleged violations of FARA. Skadden was facing allegations that it acted as an agent of the government of Ukraine by contributing to a public relations campaign directed at select members of the U.S. news media in 2012. In response to inquiries from the FARA Unit about its role in that campaign, a then-partner at Skadden allegedly made false and misleading statements, which led the FARA Unit to conclude in 2013 that the firm was not obligated to register. The facts, when uncovered, showed that Skadden was required to register in 2012. The firm registered, admitted it made false and misleading statements in response to inquiries from the FARA Unit, paid over \$4.6 million in fees, and agreed to ensure it has formal, robust procedures for responding to inquiries concerning its conduct from any federal government entity and ensuring FARA compliance as to its engagements on behalf of foreign clients.

### **DOJ Public Advisory Opinions**

Since January 2020, the DOJ has issued a significant number of advisory opinions addressing questions related to the reporting requirements of FARA and the various exemptions from the same. Below are a few noteworthy opinions that help clarify the DOJ's interpretation of FARA and its exemptions.

**Definition of “Political Consultant”:** Last year, the DOJ issued an advisory opinion providing further clarification on the definition of a “political consultant” and, for many purposes, altered the scope of this definition altogether. Under FARA, the term “political consultant” means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the U.S. or the political or public interest, policies, or relations of a foreign country or of a foreign political party. In the advisory opinion, DOJ acknowledges the wide scope of the definition but, relying on legislative history, found that a political consultant must engage in certain “political activities” in order for a registration obligation to arise, significantly narrowing the scope of political consultancy.







**Lobbying Disclosure Act Exemption:** In response to a request for an advisory opinion, the DOJ concluded that a U.S. law firm did not need to register under FARA, as its activities for a foreign client would be limited to lobbying activities, as described in the Lobbying Disclosure Act. Since the law firm was registered under the LDA and its client was not a foreign government or foreign political party, the DOJ determined that registration under FARA was not required.

**Religious, Scholastic, Academic, Scientific, or Fine Arts Exemption:** In 2020, the DOJ issued an advisory opinion clarifying that, because a non-profit organization's activities were limited to raising public awareness of the arts, it was not required to register under FARA. The DOJ reached this conclusion despite the fact that the U.S. non-profit was established for the purpose of raising public awareness of a foreign country's "art culture, literature, and performing arts" and the country's ambassador served as a non-voting member of the Board. However, the DOJ cautioned that registration under FARA would be required in the event the non-profit organization participated in any activities which could be considered "political activities" or other registerable activities for the foreign embassy.

**Legal Representation Exemption:** In responding to a law firm's request for an advisory opinion asking the DOJ to "delineate and explain" which categories of activities would require registration under FARA, the DOJ determined that certain activities, despite being completed by an attorney for a foreign principal would fall outside the legal representation exemption and therefore would require registration. These activities included: providing "legal advice and analysis on law and policy regarding matters and developments that concern and affect U.S. [foreign country] relations," "attending regular meetings" at which the foreign country's lobbyists discussed "proposed legislation and legislative strategy," sharing memoranda prepared by the law firm's lobbyists "regarding pending legislation," and drafting responses to media inquiries to be delivered by the embassy of the foreign country.





## BUCHANAN'S EXPERIENCE WITH FARA

For individuals and entities engaging in activities requiring registration under FARA, having a team of experienced FARA lawyers on their side is crucial to fully complying with the law and avoiding inadvertent violations. With more than 20 years of experience representing clients on issues related to FARA, Buchanan Ingersoll and Rooney's team of national security attorneys are intimately familiar with the nuances of FARA and remain abreast of the latest developments and DOJ enforcements. Our attorneys routinely provide counsel and advise clients in relation to FARA registration requirements, requests for advisory opinions, record keeping requirements, and potential enforcement actions.

Our International Trade & National Security practice group members have extensive experience working in government and agency capacities, as well as within industries we serve. We have fostered excellent working relationships with key federal, state, and regulatory bodies, and routinely represent clients on FARA issues before the National Security Division of the U.S. Department of Justice. Our well-rounded team is uniquely qualified to assist clients in navigating FARA and ensuring compliance.



### Daniel B. Pickard

*Chair, International Trade & National Security Practice Group*

**Email:** [daniel.pickard@bipc.com](mailto:daniel.pickard@bipc.com)

**Phone:** (202) 452-7936

In his specialty practice, Dan Pickard brings more than 20 years of experience providing guidance pertaining to the Foreign Agents Registration Act (FARA), including registration obligations, assisting with audits, and obtaining advisory opinions from the Department of Justice. He has extensive experience in regard to foreign policy and national security matters such as U.S. economic sanctions, export controls, including the International Traffic in Arms Regulations (ITAR), anti-boycott measures, and the Foreign Corrupt Practices Act (FCPA). Dan provides comprehensive international trade law compliance guidance, including to U.S. and international clients that provide goods and services that may be regulated due to national security reasons. He develops customized and specialized corporate compliance programs related to the FCPA, ITAR, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and mitigating Foreign Ownership, Control, or Influence (FOCI) issues.



### Jordan A. Yeagley

*Associate*

**Email:** [jordan.yeagley@bipc.com](mailto:jordan.yeagley@bipc.com)

**Phone:** (717) 237-4822



### Claire Webster

*Associate*

**Email:** [claire.webster@bipc.com](mailto:claire.webster@bipc.com)

**Phone:** (202) 452-7934