

# The Foreign Agents Registration Act (FARA)

**Alex Manning**

Director, National Security and  
Competitiveness Policy

*Global Business Alliance*

# Executive Summary

- The Foreign Agents Registration Act (FARA) defines anyone advocating within the US on behalf of a foreign entity as an “agent of a foreign principal.”
- All agents of a foreign principal are subjected to the invasive, expensive and time-consuming reporting requirements mandated under FARA unless they meet certain exemptions, including:
  - The Lobbying Disclosure Act (LDA) exempts registered lobbyists who already declare relevant foreign affiliations.
  - The “commercial exemption” exempts “private and nonpolitical activities in furtherance of the bona fide trade or commerce” of a foreign principal, along with other activities “not serving predominantly a foreign interest.”
- We expect that in the very near future, the Department of Justice (DOJ) will propose regulatory changes to weaken these exemptions.
- Maintaining these exemptions is imperative and FARA should remain focused on foreign governmental influence.
- Congress has consistently supported a bright line distinction between advocating for a foreign government and advocating for a foreign commercial interest.

# Background

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In 1938, Congress enacted the FARA to reduce the influence of Nazi propaganda circulating in the United States. Anticipating that greater transparency could help achieve these ends, Congress imposed new registration, reporting, and record-keeping requirements on individuals and entities acting within the United States on behalf of foreign interests.

While the act has been amended many times, the early framework endures: persons defined as “agents” of a “foreign principal” must register with the U.S. government, make a public record of the nature of their principal-agent relationship, and maintain all private records for official inspection.

# Who is a Foreign Principal?

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FARA defines foreign principal to include:

- governments of foreign countries;
- foreign political parties;
- entities organized under the laws of a foreign country or having their principal place of business in a foreign country; and
- persons outside the United States who are not U.S. citizens domiciled in the United States.

# Who is a Foreign Agent?

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FARA requires the registration of “any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal.... ” (22 U.S.C. §611(c)(1)). An agent of a foreign principal is an individual or organization who directly or through any other person—

- (i) engages within the United States in political activities for or in the interests of such foreign principal;
- (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States. (22 U.S.C. §611(c)(1))

# Who is Exempt?

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- News or press services engaged in bona fide news or journalistic activities that are organized under U.S. laws, owned and run by U.S. citizens and not owned, directed, supervised, controlled, subsidized or financed by any foreign principal or agent.
- Foreign diplomats, consular officers or other recognized officials and staff.
- Persons engaging in private and nonpolitical activities in furtherance of a foreign principal's bona fide trade or commerce. By regulation, commercial activities of even wholly-state-owned companies are considered "private" "so long as the activities do not directly promote the public or political interest of the foreign government."
- Persons engaged in the solicitation or collection of humanitarian funds to be used only for medical assistance, food and clothing.
- Persons engaging only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.
- Attorneys engaged in the legal representation of a foreign principal before a U.S. court or agency as part of an official proceeding or inquiry.
- Agents engaged as federal lobbyists for a foreign nongovernmental person, corporation, or organization if the agent has registered under the Lobbying Disclosure Act of 1995.
- Persons engaging in other activities not serving predominantly a foreign interest.

# The “Commercial Exemption”

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- The “commercial” exemption addresses activities undertaken on behalf of foreign principals that are private and nonpolitical, and other activities “not serving predominantly a foreign interest.”
- There remains, however, considerable uncertainty regarding the outer boundaries of the commercial exemption.
- The exemption *will not* apply if such activities are directed by a foreign government or political party or if they *directly promote the public or political interests of the foreign government or political party*.

# The LDA Exemption

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- When Congress strengthened federal lobbying disclosure requirements in the mid-1990s through the LDA, GBA spearheaded the effort to add a new exemption to FARA that permits an agent of a foreign private sector principal to satisfy any FARA obligation by registering under the LDA.
- Many entities that would otherwise be foreign agents register and report under the LDA, which is generally considered far less burdensome and less stigmatized and applies broadly to all commercial lobbying at the federal level. Registered lobbyists of domestic subsidiaries disclose their company's international affiliations and advocacy.
- The LDA exemption is *not* available to an agent of a foreign government or political party or if “the principal beneficiary” of the work is a foreign government or political party. “Principal beneficiary” is not defined, and in the recent past, the FARA Unit has taken an increasingly broad view.



# Key Advocacy Points on FARA

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- America Needs Foreign Investment
- Congress Never Intended FARA to Cover Foreign Commercial Interests
- Eliminating the LDA Protection Would Suppress the Voice of Constituents
- Current LDA Disclosures Clearly Show a Subsidiary's Foreign Affiliation

# America Needs Foreign Investment

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- **Supporting Millions of High-Quality Jobs:** International companies employ nearly eight million U.S. workers, providing compensation that is seven percent higher than the economy-wide average. In fact, in the last five years, international companies created more than a quarter-million new manufacturing jobs, while U.S. manufacturing jobs remained flat.
- **Fueling American Innovation:** American scientists and engineers employed by international companies are leading our nation's innovation advantage. International employers spend more than \$78 billion on research and development activities, or 13 percent of America's private-sector R&D.
- **Making America's Economy More Resilient:** International companies help broaden the U.S. economy, open new markets and give other countries a stake in America's economic success, which is good for the U.S. economy and global stability.

# Congressional Intent

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Congress has repeatedly defended the LDA exemption to FARA, recognizing that international businesses operating in the U.S. should be treated as legitimate participants in the American economy.

The Senate noted in 1997 when it passed an LDA technical corrections bill:

*[Congress'] intention is to reaffirm the bright line distinction between governmental and non-governmental representations. Agents of private commercial foreign principals will be exempt from FARA requirements so long as they register under the LDA.*

# Eliminating the LDA Protection Would Suppress the Voice of Constituents

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- Requiring U.S. employees of domestic subsidiaries to file as a “foreign agent” and publicly disclose copies of every “informational material” they disseminate – from spreadsheets to text messages – would create a clear and arbitrary disadvantage for many major U.S. employers.
- Elected officials would be less inclined to visit facilities and meet with employees in their district for fear of greatly hampering the ability of American workers to raise policy concerns with their elected representatives.

# Current LDA Disclosures Clearly Show a Subsidiary's Foreign Affiliation

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- Registered lobbyists of domestic subsidiaries already disclose their company's international affiliations and advocacy.
- As required by Section 4(b)(4) of the Lobbying Disclosure Act (LDA), Question 14 of the Lobbying Registration Form (LD-1) – under a bold heading titled “FOREIGN ENTITIES”
  - Requires broad disclosure of foreign-parent corporations and other foreign entities affiliated with the registrant.

# Outlook

- We expect the DOJ to release proposed regulations this spring
- GBA is engaging with membership and key Members of Congress
- Further advocacy will be determined by the proposed regulations



# Get Connected

1. Join GBA's FARA Working Group, which convenes when necessary to assess strategy and new legislative proposals
2. Connect GBA with your House and Senate contacts for a meeting on FARA