

FARA in Focus

What Shifting Scrutiny of Foreign Relationships Means for Tax-Exempt Organizations

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Agenda

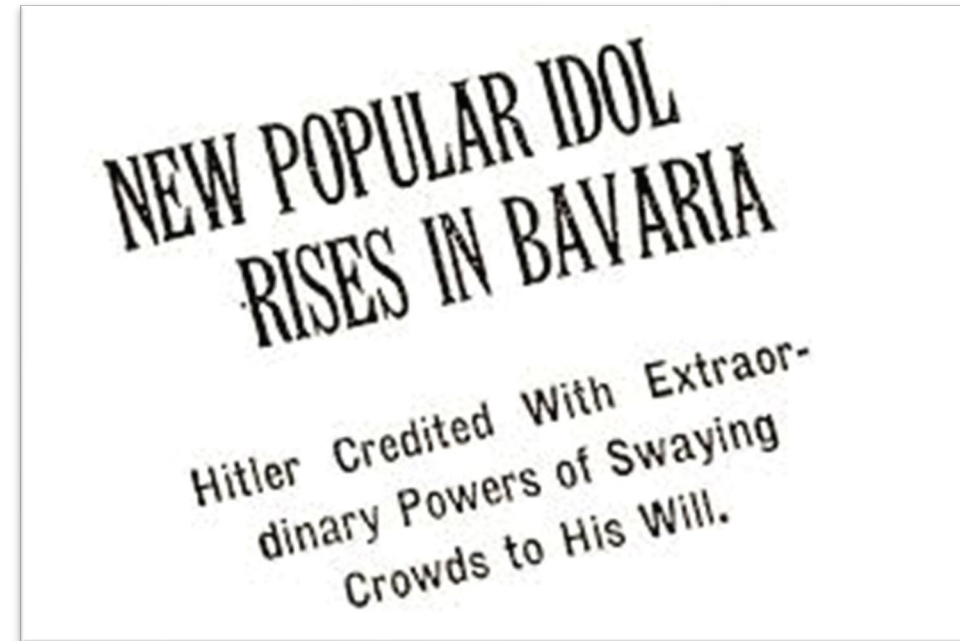
- Background and Purposes – Setting the Stage
- Federal Oversight of Foreign Relationships – Agency, Covered Activities, and Exemptions
- Enforcement Trends – Federal Enforcement Cools as States Step into the Void
- Practical Tips for Nonprofits – Avoiding Traps That Could Trigger Foreign Agent Registration

FARA Background and Purposes

Setting the Stage

FARA: Background and Purposes

- Originally enacted in 1938 to bring transparency to Nazi propaganda in U.S. and other foreign efforts to influence U.S. government in pre-WW II period
- Last comprehensive amendments in 1966, narrowing the statute to focus on political activities and on activities benefiting economic interests of foreign governments and political parties
- Renewed relevance in last decade as awareness of foreign interference increases



FARA: Background and Purposes (cont.)

Consequences of Registration

FARA does not prohibit any activities on behalf of a foreign principal; primary purpose is to **promote transparency** of relationships with foreign entities.

- Registrants file publicly accessible reports with the U.S. Department of Justice:
 - **Initial Registration**
 - Includes details of agent's ownership structure and business activities; description of anticipated activities for foreign principal and contact info for foreign principal; copies of agent's articles of incorporation and bylaws; details of compensation arrangement; copy of agreement/contract with foreign principal
 - **Short-Form (Individual) Registration** – Required from each individual who performs non-clerical services for a foreign principal
 - Includes individual's residential address, political contribution history, et al.
 - **Supplemental Filings (every 6 months)** – Updates on activities
 - **Informational Materials Disclosures (48-hour reports)** – Agent must submit copies of all “informational materials” distributed for a foreign principal

FARA: Background and Purposes

Consequences of Registration (cont.)

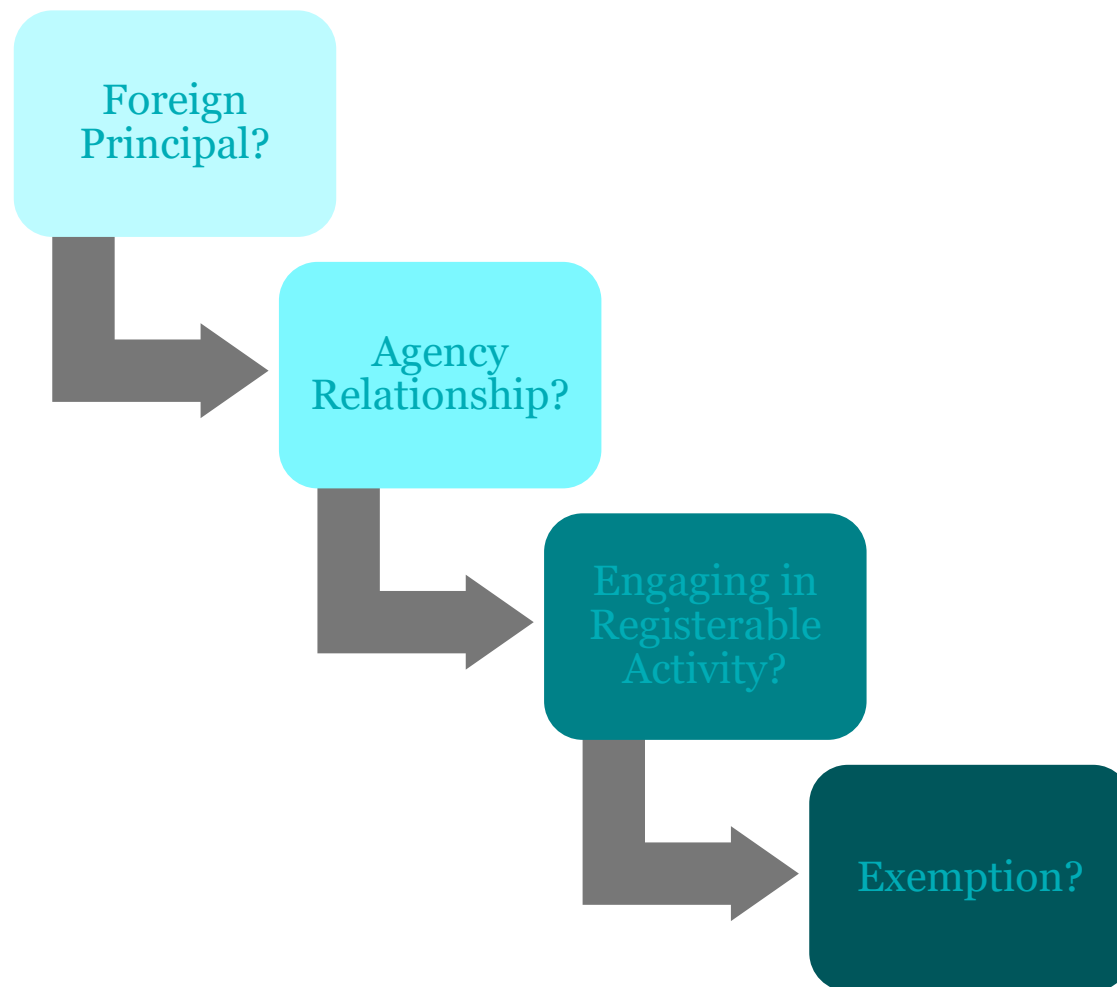
- Identifying information in communications
 - All “informational materials” agent distributes on behalf of foreign principal must carry disclaimer indicating that the person is an agent under FARA and identifying foreign principal
 - Agents must identify themselves as acting on behalf of foreign principal in interactions with U.S. government officials, including in providing congressional testimony
- Recordkeeping requirements
- Reputational considerations
- May affect eligibility for certain government contracts or positions

FARA: Federal Oversight of Foreign Relationships

Agency, Covered Activities, and Exemptions

FARA: Who Must Register and Report?

- An **agent** of a **foreign principal** must register with and report to the U.S. Department of Justice if engaged in certain **covered activities** within the U.S. unless an **exemption** applies
 - No *de minimis* threshold; can be triggered by even the slightest activity that meets statutory requirements



FARA: Foreign Principals



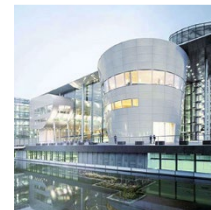
Foreign Government

- Government
- Political Party
- Faction
- Insurgents
- Sovereign Wealth Funds



Individuals Outside U.S.

- Non-U.S. Citizen
- Not Domiciled in U.S.



Foreign Organizations

- Corporations
- Other Business Entities
- Nonprofits
- Associations
- Organized Abroad
- Incorporated Abroad

FARA: Scope of Agency

Person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order or request or under the direction or control of either:

OR

A Foreign Principal

A person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal (i.e., an intermediary)

Who engages in registerable activity

FARA: Scope of Agency (cont.)

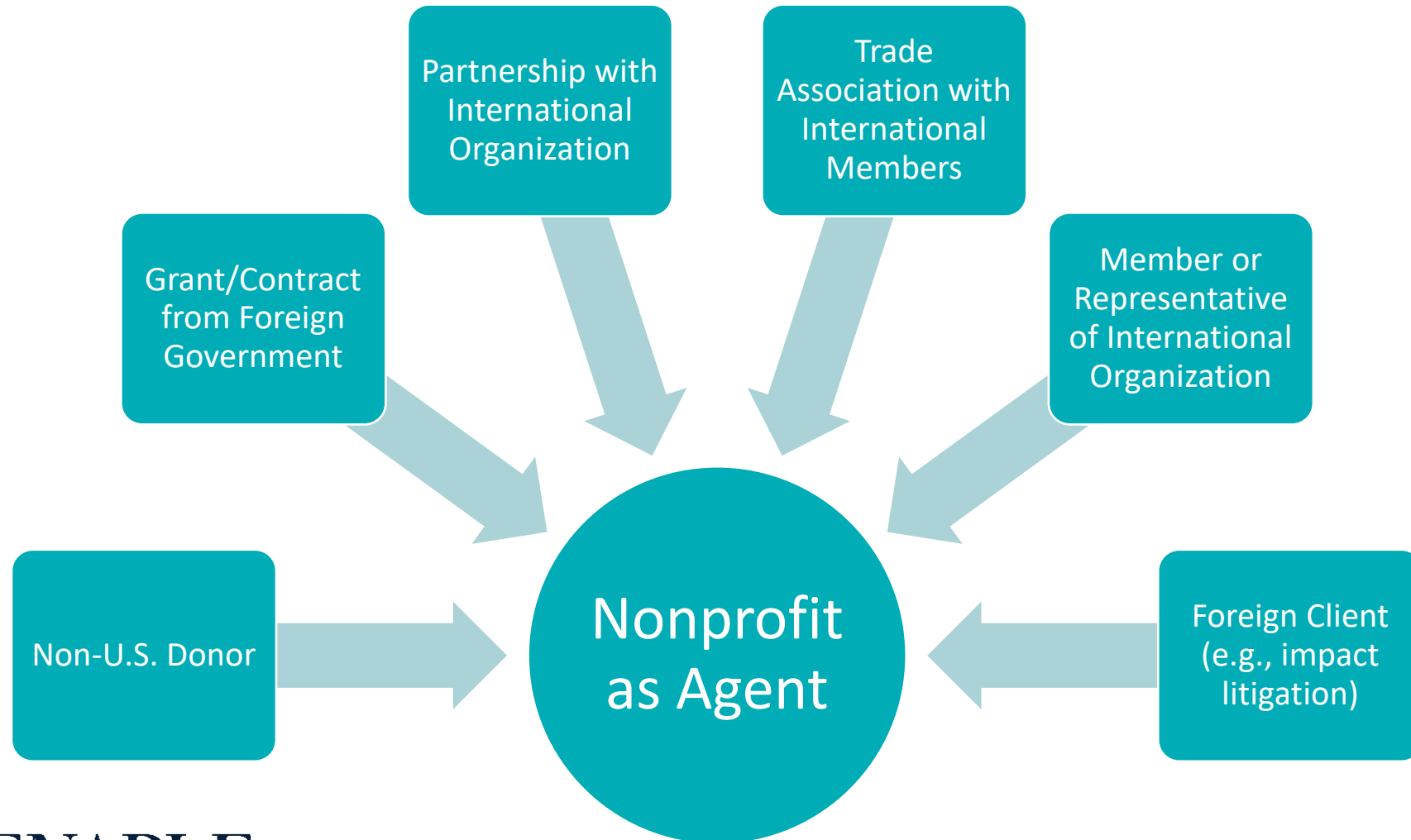
Test: Whether it is “fair to draw the conclusion that an individual is not acting independently, is not simply stating his or her own views, but is acting as an agent or alter ego of the foreign principal.”

NOTE: Funding from a foreign principal is a key consideration in agency analysis, but it is neither necessary nor sufficient on its own to establish agency

Factors Considered:

- Is the foreign principal funding a U.S. organization’s activity? What proportion of a program is funded by a foreign principal? Is funding earmarked for or restricted to FARA-registrable activities?
- Is foreign funding contingent on any conduct by a U.S. organization? (consider: reporting obligations, benchmarks, etc.)
- Does the activity fit within a U.S. organization’s mission?
- Does the activity connected with a foreign principal reflect only the U.S. organization’s viewpoints, goals, and directives, or is the U.S. organization representing a foreign principal’s views or interests?
- Are the U.S. organization’s personnel directed by or responsible to a foreign principal?
- Does a foreign principal dictate methods or milestones of the U.S. organization’s activities?
- Did activities begin shortly after establishing a relationship with a foreign principal?
- Do foreign principals participate in decision making by the U.S. organization? How much control do they have?

FARA for Nonprofits: Possible Agency Relationships



FARA: Covered Activities



FARA: Covered Activities (cont.)

Political Activity

- Activities intended to “in any way influence” any agency or official of the U.S. government or “any section of the public within the U.S.” with respect to:
 - Domestic or foreign policy of the U.S. or
 - Political or public interests, policies, or relations of a government of a foreign country or political party
- **Examples:**
 - Lobbying, including behind-the-scenes strategy consulting
 - Issue advocacy
 - Public education
 - Promoting tourism or business opportunities in a foreign country

FARA: Covered Activities (cont.)

Publicity and Public Relations Activities

- **Public Relations Counsel** – Any person who informs, advises, or represents a foreign principal in a public relations matter involving the foreign principal's public or political interests, policies, or relations
- **Publicity Agent** – Any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information for a foreign principal
- **Information-Service Employee** – A person who furnishes, disseminates, or publishes information about the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of a foreign country or foreign principal
- **Examples:**
 - Research
 - Public education
 - Cultural exchanges
 - Language and history teachings
 - Promoting conferences

FARA: Covered Activities (cont.)

Soliciting, Collecting, Disbursing Funds

Activities within the United States to solicit, collect, disburse, or dispense funds or other things of value for or in the interest of a foreign principal

Examples:

- Fundraising
- Paying travel costs and expenses for U.S. policymakers and media to attend a foreign conference
- Investment activities
- Litigation funding

FARA: Key Exemptions

- **Private and Non-Political Activities Furthering Bona Fide Trade or Commerce** – Agent representing a foreign business, nonprofit, or individual need not register if engaged in commercial activities
 - *Not available to agents of foreign governments or political parties*
 - *Not available when registrable activities are “political” in nature*
- **Domestic Interest Exemption** – Agent need not register if activity (1) “furthers bona fide commercial, industrial, or financial operations”; (2) is not directed by a foreign government or political party; and (3) does not “directly promote the public or political interests of a foreign government or political party.”
 - *Available to agents engaged in political activity*
 - *Not available to agents of foreign governments or political parties*
 - *Can apply to nonprofit activities that further mission-driven operations*
 - *Key consideration is whose interests the activity promotes*

FARA: Key Exemptions (cont.)

- **LDA Exemption** – An agent need not register under FARA if engaged in lobbying activities and registered under the LDA
 - *Widely used*
 - *Does not apply to agents of foreign governments or political parties or where the “principal beneficiary” of the representation is a foreign government or political party*
- **Academic Exemption** – Persons engaged “only” in activities that further the fine arts or bona fide religious, scholastic, academic, or scientific pursuits
 - *Construed narrowly; does not apply to agents also engaged in other registrable activities*
- **Litigation Exemption** – Exempts agents representing a foreign principal in work connected to a court or agency proceeding where attorney discloses principal’s identity
 - *Construed narrowly; applies only to activities directly related to in-court/in-proceeding activities; does not apply to publicity or lobbying activities related to case*

FARA Enforcement Trends

Federal Enforcement Cools as States Step into the Void

FARA: Recent Enforcement Trends

- **Pending Regulatory Reform.** After a long lead time, DOJ released a Notice of Proposed Rulemaking (NPRM) in January 2025, aiming to narrow Section 613(d)(2)'s commercial exemption, update definitions, and modernize labeling rules.
- **Shift from Criminal to Civil Enforcement.** Attorney General Pam Bondi directed DOJ to limit criminal prosecutions under FARA to cases resembling traditional espionage. The FARA Unit was instructed to pivot toward civil enforcement, regulatory initiatives, and public guidance.
- **Civil Enforcement Continues.** Despite reprioritization, DOJ retains the ability to issue letters of inquiry, conduct audits, demand registrants to update filings, or pursue injunctive relief.
- **Expanding State-Level Oversight (“Baby FARA”).** States have enacted or proposed their own foreign agent registration laws to enhance transparency of foreign influence at the state level.

“Baby FARA” Trends

- Often mirror federal FARA, attempting to regulate disclosure of foreign influence behind state-level activities
- Variations in scope
 - Foreign principals covered
 - Activities that trigger disclosure
 - Available exemptions
 - Disclosure requirements
- Political momentum – expect more states
- Outstanding questions:
 - Constitutionality
 - Enforcement



“Baby FARA”: Florida Charitable Solicitation Law

- Ban on soliciting or accepting contributions from a “Foreign Source of Concern”
 - China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria
 - Safe harbor for first violation if org can show donor falsely certified they are not a prohibited source and donation is refunded
- Creation of “Honest Services Registry”
- Registration attestation requirements for election-related activities
- Authorizes the Florida Department of Agriculture and Consumer Services to investigate potential violations and refer nonprofits to the Florida Elections Commission for investigation of violations involving state and local election-related activities

“Baby FARA”: Florida Charitable Solicitation Law (cont.)

Tips:

- Update solicitation materials and donation platforms to include affirmations that donor is not a foreign source of concern
- Work with online donation vendors to exclude contributions from sources that list an address in a foreign country of concern
- Screen and refund contributions from foreign sources of concern received in response to campaigns that reach Florida
- Consider bifurcating solicitations targeting Florida residents

Outstanding Questions:

- Constitutionality?
- How enforced?

“Baby FARA” – State Efforts to Curb Foreign Interference

- Arkansas, Louisiana, Nebraska, and Texas enacted FARA-like laws in 2025 applicable to organizations that engage in covered activities within those states
 - Focus on foreign principals (incl. governments, businesses, organizations, and individuals) from “countries of concern” or “foreign adversaries” – like China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria
 - Covered activities vary
 - Narrower exemptions
 - Registration with and disclosure to state authorities
- Georgia passed a broad FARA-like bill in 2024 that included **no exemptions** – but the governor vetoed it
- States are also passing laws to restrict foreign contributions to ballot measure campaigns
- **Tip:**
 - If your organization has relationships in these countries, consider whether any activities would trigger disclosure and what disclosure would look like

Practical Tips for Nonprofits

Avoiding Traps That Could Trigger Foreign Agent Registration

Compliance Tips for Nonprofits

Know Your Foreign Donor or Partner!!

- Understand whether your donor is affiliated with a foreign government or a “country of concern” (as defined by state or federal law)
- This is critical for both FARA compliance and state-level foreign influence laws

Scrutinize Contract and Grant Language

- Watch for language requiring the nonprofit to “report back” or provide updates to a foreign donor, or other language that appears to make donation contingent on following donor’s direction
- Such clauses may indicate direction or control, potentially establishing an agency relationship under FARA

Align Advocacy with Organizational Mission

- Ensure that all advocacy efforts are directly tied to the nonprofit’s stated mission
- Develop activities through internal governance processes
- Maintain independence—in both fact and appearance—to avoid triggering FARA registration

Avoid Foreign Donations Earmarked for Covered Activities

- General or programmatic support without direction or expectations does not automatically create a foreign agency relationship
- But contributions linked to lobbying or aligned with a foreign principal’s policy objectives increase FARA risk

Questions?

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