

February 11, 2022

Jennifer Kennedy Gellie, Chief, FARA Unit  
Counterintelligence and Export Control Section  
National Security Division  
U.S. Department of Justice  
175 N Street NE  
Constitution Square, Building 3-Room 1.100  
Washington DC 20002

Dear Chief Gellie,

The American Council on Education (ACE) and the undersigned higher education associations submit these comments in response to the National Security Division, Department of Justice (the Department) Advance Notice of Proposed Rulemaking (ANPRM) on the clarification and modernization of the implementing regulations for the Foreign Agents Registration Act of 1938 (FARA), Docket Number NSD 102.

As the ANPRM notes, FARA was established to “ensure that the government and the American people are aware of people who are acting within this country as agents for foreign principals and are informed about their activities to influence public opinion or governmental action on political or policy matters.” Its intent is clear: to “protect the integrity of American democracy.” As part of the ANPRM, the Department is soliciting suggestions for clarifications or amendments to the current FARA implementing regulations. We appreciate the opportunity to provide feedback and input on this important reassessment of existing FARA requirements, and we encourage modifications to prevent potential conflicts with academic and scientific activities of colleges and universities that FARA already recognizes.

Importantly and appropriately, FARA includes a statutory exemption for “any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic and scientific pursuits or of the fine arts.” As part of the ANPRM, the Department has asked in Question 6, “Should the Department issue additional or clarified regulations regarding this exemption to clarify the circumstances in which this exemption applies? If so, how should those additional regulations clarify the scope of the exemption?”

We believe that in updating the FARA regulations, it is important that the Department maintain, and indeed strengthen, this exemption. FARA was intended to “combat covert foreign government influence in our political process.”<sup>1</sup> The commitment to free speech, the vigorous exchange of ideas, scholarly debate, and the search for knowledge encompassed in the concept of academic freedom are core to the missions of U.S. universities and inherent to their

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<sup>1</sup> DOJ FARA explanatory document: <https://www.justice.gov/nsd-fara/page/file/1312086/download>

very identity. Religious, scholastic, academic and scientific pursuits, and the fine arts should therefore continue to have a broad exemption from FARA because freedom of expression and association are fundamental to these pursuits. However, as currently written, the Department's rules regarding the definition of what constitutes "political activities" that can be excluded from the existing exemption may be overly broad. Some may interpret it in ways that capture activities that should, in fact, be covered by the exemption. For this reason, we encourage the Department to more narrowly define and interpret the definition of "political activities" in the FARA regulations. In doing so, it is essential that the Department be rigorous in its attentiveness to ensuring that the definition does not capture legitimate and reasonable scholastic, academic, and scientific pursuits as being "political" in nature (e.g., inviting a guest speaker with specific political views to come speak to a class or elsewhere on campus while not actually endorsing or promoting those particular views).

As the Department considers these comments in the context of our collective recognition of the importance of protecting our institutions against undue foreign influence, we suggest that it be cognizant of the other existing and more effective mechanisms than FARA to achieve that goal. This includes Section 117 of the Higher Education Act, which requires institutions of higher education to report gifts or contracts from foreign sources over \$250,000. In addition, federally funded researchers are statutorily required under Section 223 of the National Defense Authorization Act (NDAA) for Fiscal Year 2021 to report current and pending research support they receive from foreign sources, including in-kind support, at the time they apply for federal grants and other awards. Our institutions are also currently working with the White House Office of Science and Technology Policy (OSTP) as they develop guidance to implement National Security Presidential Memorandum (NSPM) 33, which is "intended to strengthen protections of U.S. Government-supported R&D against foreign government interference and misappropriation, while maintaining an open environment to foster research discoveries and innovation that benefit the United States and the world."<sup>2</sup> Among other things, NSPM 33 will require campuses receiving in excess of \$50 million in federal research grants annually to develop comprehensive campus research security plans.

In conclusion, the higher education community has been actively engaged in national efforts to combat foreign influence and improve transparency. We take very seriously our responsibility to protect and fight against malign foreign influence and interference. At the same time, we feel it is critical for colleges and universities to maintain and protect fundamental principles of free speech, academic freedom, and freedom of association with international partners. These values are central to the abilities of institutions to advance the very academic, artistic, and scientific pursuits that the current exemption is intended to protect.

We look forward to engaging in the rulemaking process with the Department of Justice on this important issue.

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<sup>2</sup> January 2022 "Guidance for Implementing NSPM-33 on National Security Strategy for United States Government-Supported Research and Development" <https://www.whitehouse.gov/wp-content/uploads/2022/01/010422-NSPM-33-Implementation-Guidance.pdf>

Sincerely,



Ted Mitchell  
President

On behalf of:

ACPA-College Student Educators International  
American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Medical Colleges  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
Association of Public and Land-Grant Universities  
Consortium of Universities of the Washington Metropolitan Area  
Council for Advancement and Support of Education  
Council for Christian Colleges & Universities  
Hispanic Association of Colleges and Universities  
National Association of Independent Colleges and Universities