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Foreign Agents Registration Act (FARA): Background and Issues for Congress

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Caplin & Drysdale

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Foreign Agents Registration Act (FARA): Background and Issues for Congress

On June 9, 1938, President Franklin D. Roosevelt signed the Foreign Agents Registration Act (FARA) into law (22 U.S.C. §§611-621). As initially enacted, FARA sought to expose foreign influence in American politics, with a specific focus on identifying and making a public record of attempts to spread propaganda and foreign agendas. Since its enactment, FARA has been revised to respond to the changing nature of representation of foreign entities in the United States. Three revisions—which occurred in 1942, 1966, and 1995—have reoriented the law away from propaganda activities and toward foreign advocacy and lobbying.

According to the Department of Justice (DOJ), the law focuses on requiring foreign agents—an individual or group that acts “as an agent, representative, employee, or servant, otherwise acts at the order, request, or under the direction or control of a ‘foreign principal’” and conducts certain covered activities (22 U.S.C. §611(c); 28 C.F.R. §5.100)—to register with the DOJ. FARA defines a *foreign principal* as “a foreign government, a foreign political party, any person outside the United States (except U.S. citizens who are domiciled within the United States), and any entity organized under the laws of a foreign country or having its principal place of business in a foreign country” (22 U.S.C. §611(b); 28 C.F.R. §5.100). FARA does not prohibit advocacy activities, but rather requires covered individuals and firms to register with the DOJ. FARA was initially administered by the Department of State, but it is now administered by the DOJ. On a semiannual basis, FARA requires the DOJ to issue a report to Congress on DOJ’s administration and enforcement of the law.

This report provides the legislative history of the Foreign Agents Registration Act, a summary of its current provisions, and an analysis of recent legislative proposals to amend the law. Recent proposals include additional registration and disclosure requirements, changing requirements for labeling of informational materials, granting the DOJ civil investigative demand authority, repealing FARA exemptions, and restricting certain former officials from registering as foreign agents. Additionally, Congress could consider providing additional funding and/or staffing for FARA administration or consider combining FARA administration with the administration of the Lobbying Disclosure Act (LDA).

Contents

Foreign Influence Concerns Prior to World War II.....	1
Foreign Agents Registration Act of 1938.....	3
Amendments to FARA.....	6
1942 Amendments.....	6
1966 Amendments.....	8
1995 Amendments.....	10
Summary of Current FARA Provisions.....	11
Section 611—Definitions.....	11
Section 612—Registration Statement.....	12
Section 613—Exemptions.....	13
Section 614—Filing and Labeling of Political Propaganda.....	14
Section 615—Books and Records.....	15
Section 616—Public Examination of Official Records; Transmittal of Records and Information.....	16
Section 617—Liability of Officers.....	16
Section 618—Enforcement and Penalties.....	16
Section 619—Territorial Applicability of Subchapter.....	16
Section 620—Rules and Regulations.....	17
Section 621—Reports to Congress.....	17
Recent Legislative Proposals to Amend FARA.....	17
Registration and Disclosure Requirements.....	17
Labeling of Informational Materials.....	18
Civil Investigative Demand Authority.....	19
Repealing Exemption Under FARA for LDA Registration.....	20
Restricting Certain Former Officials From Acting as Foreign Agents.....	21
Other Considerations for Congress.....	23
Provide Additional Funding and/or Staffing for Administration or Enforcement.....	23
Combine FARA and LDA Administration.....	23
Concluding Observations.....	24

Figures

Figure 1. Exemptions to Registration Under the Foreign Agents Registration Act.....	14
Figure 2. Example of FARA Informational Materials Label Requirements.....	15

Tables

Table A-1. Foreign Agent Registration Act (FARA) Definitions.....	26
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Appendixes

Appendix. Foreign Agent Registration Act (FARA) Definitions..... 26

Contacts

Author Information 28

Caplin & Drysdale

On June 8, 1938, President Franklin D. Roosevelt signed the Foreign Agents Registration Act (FARA) into law.¹ The law sought to “combat the spread of hidden foreign influence through propaganda in American politics,”² by “shining ‘the spotlight of pitiless publicity’ on such propaganda.”³ Specifically, FARA responded to foreign influence concerns by creating a system designed “to identify agents of foreign principals who might engage in subversive acts or in spreading foreign propaganda and to require them to make public record of the nature of their employment.”⁴

Today, the Department of Justice (DOJ) administers FARA, and the law “requires certain agents of foreign principals who are engaged in political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities.”⁵ FARA “neither prohibits representation of foreign interests in the United States nor prevents dissemination of foreign propaganda.”⁶ Instead, the act provides only for public disclosure of any such activities,⁷ which is seen by some as a protection of individuals’ First Amendment rights to speech and petition.⁸

This report traces the history of the Foreign Agents Registration Act. It begins with a legislative history of FARA, including its enactment in 1938 and major amendments in 1942, 1966, and 1995. It next includes a section-by-section analysis of the current law. Then, issues for Congress are considered. These issues include recent legislative proposals to amend aspects of FARA and other administrative considerations. This report does not include issues related to foreign interference in elections or campaign finance, which are not directly covered by FARA.⁹

Foreign Influence Concerns Prior to World War II

During the Revolutionary War, the Continental Congress had entered into a foreign alliance with France to help the colonies defeat the British.¹⁰ After the war, the Founding Fathers grew

¹ P.L. 75-583, 52 Stat. 631, June 8, 1938.

² U.S. Department of Justice, Office of Public Affairs, “Department of Justice Posts Advisory Opinions on FARA.Gov Website,” press release, June 8, 2019.

³ Karim G. Lynn, “Unconstitutional Institutions: Political Propaganda and the Foreign Agents Registration Act,” *New York Law School Law Review*, vol. 33, no. 2 (1988), p. 346.

⁴ *Vierick v. United States*, 318 U.S. 236, 241 (1943). See also, U.S. Congress, House Committee on the Judiciary, *Lobbying Disclosure Act of 1995*, report to accompany H.R. 2564, 104th Cong., 1st sess., November 14, 1995, H.Rept. 104-339, part 1 (Washington: GPO, 1995), pp. 5-8.

⁵ U.S. Department of Justice, “Foreign Agents Registration Act,” at <https://www.justice.gov/nsd-fara>.

⁶ Philip J. Perry, “Recently Proposed Reforms to the Foreign Agents Registration Act,” *Cornell International Law Journal*, vol. 23, no. 1 (Winter 1990), p. 133.

⁷ U.S. Congress, House Committee on the Judiciary, *Foreign Propaganda*, report to accompany H.R. 1591, 75th Cong., 1st sess., July 30, 1937, H.Rept. 1381 (Washington: GPO, 1937), p. 2.

⁸ Ava Marion Plakins, “Heat Not Light: The Foreign Agents Registration Act after *Meese v. Keene*,” *Fordham International Law Journal*, vol. 11, no 1 (1987), pp. 184-207; and Nick Robinson, “‘Foreign Agents’ in an Interconnected World: FARA and the Weaponization of Transparency,” *Duke Law Journal*, vol. 69 (2020), pp. 1075-1147, at <https://scholarship.law.duke.edu/dlj/vol69/iss5/2>.

⁹ For more information on foreign involvement in campaigns and campaign finance, see CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett; and CRS In Focus IF10697, *Foreign Money and U.S. Campaign Finance Policy*, by R. Sam Garrett.

¹⁰ For example, see C.H. Van Tyne, “Influence which Determined the French Government to Make the Treaty with America, 1778,” *The American Historical Review*, vol. 21, no. 3 (April 1916), pp. 528-541; C.H. Van Tyne, “French Aid Before the Alliance of 1778,” *The American Historical Review*, vol. 31, no. 1 (October 1925), pp. 20-40; and Orville T. Murphy, “The Battle of Germantown and the Franco-American Alliance of 1778,” *The Pennsylvania*

concerned about the potential influence of foreign powers on the development of the United States.¹¹ Accordingly, the Constitution contains a specific provision against the acceptance of an emolument, office, or title granted by a foreign state.¹²

President George Washington also addressed foreign influence. In his 1796 farewell address, President Washington wrote:

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens) the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.¹³

After Washington's address, foreign influence continued to be an issue for the government. In the early days of the republic, several incidents brought the role of foreign influence to prominence. In 1808, for example, the House of Representatives agreed to a resolution creating a committee to investigate allegations that General James Wilkinson, General of the Army, was a Spanish agent.¹⁴ Although General Wilkinson was ultimately acquitted after an investigation,¹⁵ the ongoing interest by foreign governments to influence American public policy was perceived as a continuing threat for much of the next century.¹⁶

Balancing constitutional protections of free speech and the right to petition against foreign influence has historically been a challenge.¹⁷ The right to petition the government has long been considered a protected and "preferred" freedom "enshrined in the First Amendment."¹⁸ Rooted in

Magazine of History and Biography, vol. 82, no. 1 (January 1958), pp. 55-64.

¹¹ Gouverneur Morris, among others, expressed this concern on July 5, 1787, during discussions about the Constitution. The *Records of the Federal Convention of 1787* note that Morris said: "How far foreign powers would be ready to take part in the confusions he would not say. Threats that they will be invited have it seems been thrown out. He drew the melancholy picture of foreign intrusions as exhibited in the History of Germany, and urged it as a standing lesson to other nations." *Records of the Federal Convention of 1787*, edited by Max Farrand, vol. 1 (New Haven: Yale University Press, 1911), p. 530, at [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(fr001157\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(fr001157))).

¹² U.S. Constitution, Article I, section 9, clause 8. For more information on the Emoluments Clause, see CRS In Focus IF11086, *The Emoluments Clauses of the U.S. Constitution*, by Kevin J. Hickey and Michael A. Foster.

¹³ U.S. Senate, United States Senate Historical Office, *Washington's Farewell Address to the People of the United States*, S.Pub. 115-5 (Washington: GPO, 2017), pp. 20-21, at https://www.senate.gov/artandhistory/history/resources/pdf/Washingtons_Farewell_Address.pdf.

¹⁴ "General Wilkinson," House debate, *Annals of the Congress of the United States*, vol. 18 (January 18, 1808), pp. 1461-1462. General Wilkinson was given back his commission by President James Madison on February 14, 1812. In explaining why General Wilkinson was being recommissioned, President Madison wrote "that although there are instances in the Court, as well as in the conduct of the Officer on trial, which are evidently and justly objectionable, his acquittal of the several charges agst. [sic] him is approved, and his sword is accordingly ordered to be restored." Andro Linklater, *An Artist in Treason: The Extraordinary Double Life of General James Wilkinson* (New York: Walker Publishing Company, 2009), p. 294.

¹⁵ Thomas Robson Hay, "Some Reflections on the Career of General James Wilkinson," *The Mississippi Valley Historical Review*, vol. 21, no. 4 (March 1935), p. 486.

¹⁶ For example, as early as 1852, a joint resolution was introduced to reaffirm "that governments are instituted among men to secure the inalienable rights of life, liberty, and the pursuits of happiness" and resolved that the government "will perseveringly adhere to, as a principle of international action, the advice given by Washington in his Farewell Address: ... 'Against the insidious wiles of foreign influence.'" For more information, see "Non-Intervention," *Congressional Globe* vol. 21 (January 19, 1852), p. 298.

¹⁷ U.S. Congress, House Special Committee on Un-American Activities, *Investigation of Nazi and Other Propaganda*, report pursuant to H.Res. 198, 73rd Congress, 74th Cong., 1st sess., February 15, 1935, H.Rept. 153 (Washington: GPO, 1935), p. 2.

¹⁸ Edmund G. Brown. "The Right to Petition: Political or Legal Freedom," *UCLA Law Review*, vol. 8, issue 3 (July

English common law,¹⁹ the colonists brought the right to petition with them to the New World, and it became engrained in American life.²⁰ Generally, the right to petition focuses on the ability of citizens to contact their elected officials through various means. This might include traditional forms of petition (e.g., postcards, form letters, documents signed by multiple citizens) as well as the ability to hire representation to lobby the government.²¹ Consequently, laws that address foreign influence have generally avoided censorship in favor of transparency in order to “preserve in this country the freedom of speech and freedom of the press.”²²

Foreign Agents Registration Act of 1938

The idea of regulating foreign influence dates to at least the early 1900s, when the first pieces of legislation that aimed at directly addressing the real or perceived possibility of foreign influence in American politics were introduced. These measures generally required the registration of individuals or groups seeking to influence public policy or promote propaganda. Some measures would have banned certain classes of individuals from acting as foreign agents. For example, in 1917, three measures were introduced in the House. These would have required the filing of certain information by groups and individuals seeking to influence legislation or public opinion;²³ prohibited the making of untrue statements under oath to influence the passage or defeat of measures that dealt with a foreign nation;²⁴ or restricted aliens from acting as foreign agents without notification to and consent from the U.S. government.²⁵ The House did not consider any of these measures.

Although Congress did not consider any of the 1917 measures or others like them, in 1918, the Senate Judiciary Committee empaneled a subcommittee to investigate German and Bolshevik propaganda.²⁶ The subcommittee found that German and Bolshevik brewing and liquor interests had

furnished large sums of money for the purpose of secretly controlling newspapers and periodicals ... contributed enormous sums of money to political campaigns in violation of the Federal statutes and the statutes of several of the states ... [and] subsidized authors of

1961), p. 730.

¹⁹ In 1628, the English Parliament “forced the King [Charles I] to assent to the Petition of Right. This asked for settlement of Parliament’s complaints against the King’s non-parliamentary taxation and imprisonments without trial, plus the unlawfulness of martial law and forced billets.” For more information see, United Kingdom Parliament, “The Civil War: Charles I and the Petition of Right,” *Living Heritage*, at <http://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/civilwar/overview/petition-of-right>.

²⁰ Stephen A. Higginson, “A Short History of the Right to Petition Government for the Redress of Grievances,” *The Yale Law Journal*, vol. 96, no. 1 (November 1986), pp. 142-166; and Norman B. Smith, “‘Shall Make No Law Abridging ...’: An Analysis of the Neglected, But Nearly Absolute, Right of Petition,” *University of Cincinnati Law Review*, vol. 54, no. 4 (1986), pp. 1153-1197.

²¹ Maggie McKinley, “Lobbying and the Petition Clause,” *Stanford Law Review*, vol. 68, issue 5 (May 2016), pp. 1131-1206; and Nicholas W. Allard, “Lobbying Is an Honorable Profession: The Right to Petition and the Competition to Be Right,” *Stanford Law & Policy Review*, vol. 19, no. 1 (2008), pp. 23-69.

²² Testimony of Carl J. Austrian, American-Jewish Committee, in U.S. Congress, House Committee on the Judiciary, Subcommittee No. 1, *To Require the Registration of Certain Persons Employed by Agencies To Disseminate Propaganda in the U.S.*, hearing on H.R. 1591, 75th Cong., 1st sess., June 16, 1937, unpublished (Washington: GPO, 1937), p. 28.

²³ H.R. 5287 (65th Congress), introduced August 24, 1917.

²⁴ H.R. 2585 (65th Congress), introduced April 10, 1917.

²⁵ H.R. 2583 (65th Congress), introduced April 10, 1917.

²⁶ S.Res. 307 (66th Congress), agreed to February 16, 1920.

recognized standing in literary circles to write articles of their selection for many standard periodicals.²⁷

With the rise of Nazism in 1930s Germany, concern about foreign propaganda and influence grew in the United States.²⁸ To address the growing threat of propaganda, the House of Representatives created the Special Committee on Un-American Activities in 1934.²⁹ The special committee was instructed to conduct an

investigation of (1) the extent, character, and objects of Nazi propaganda activities in the United States, (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.³⁰

In February 1935, the special committee issued its findings to the House.³¹ After a thorough investigation, the special committee made several recommendations, including

1. enacting legislation to require representatives of foreign governments, political parties, or companies to register with the government;
2. restricting the length of stay of foreigners engaged in propaganda activities;
3. allowing the prosecution of witnesses who refuse to cooperate with congressional committees;
4. and prohibiting individuals from advocating for “the overthrow or destruction by force and violence of the Government of the United States.”³²

In the 75th Congress (1937-1938), Representative John McCormack, former chair of the special committee, introduced the bill that would become FARA.³³ H.R. 1591, as introduced, would have required “all persons who are in the United States for political propaganda purposes ... to register with the State Department and to supply information about their political propaganda activities, their employers, and the terms of their contracts.”³⁴

In his testimony on foreign influence legislation before a subcommittee of the House Judiciary Committee, Representative McCormack testified on the need for registration and disclosure legislation. He said:

Now what is the evidence? Naturally you gentlemen would ask the question “What is the evidence; what is the necessity for this?” We found during our investigation that Ivy L. Lee, one of the biggest and most powerful public relations firms [in] this county was indirectly in the employ of the German Government. Now I say indirectly. How was it?

²⁷ U.S. Congress, Senate Committee on the Judiciary, *Brewing and Liquor Interests and German and Bolshevik Propaganda*, pursuant to S.Res. 307 and 439 (65th Congress), 66th Cong., 1st sess., July 28, 1919, S.Doc. 62, vol. 1 (Washington: GPO, 1919), pp. v-vi.

²⁸ U.S. Congress, Special Committee on Un-American Activities, *Investigation of Nazi and Other Propaganda*, 74th Cong., 1st sess., February 15, H.Rept. 153 (Washington: GPO, 1935), p. 2.

²⁹ H.Res. 198 (73rd Congress), agreed to March 20, 1934.

³⁰ H.Res. 198 (73rd Congress).

³¹ U.S. Congress, Special Committee on Un-American Activities, *Investigation of Nazi and Other Propaganda*, 74th Cong., 1st sess., February 15, H.Rept. 153 (Washington: GPO, 1935).

³² *Ibid.*, p. 25.

³³ “Public Bills and Resolutions,” *Congressional Record*, vol. 81, part 1 (January 5, 1937), p. 34.

³⁴ U.S. Congress, House Committee on the Judiciary, *Foreign Propaganda*, report to accompany H.R. 1591, 75th Cong., 1st sess., July 30, 1937, H.Rept. 1381 (Washington: GPO, 1937), p. 2.

They were employed by a Swiss firm, foreign industry, controlled by the German dye industry, and Mr. Lee in his own testimony admitted when he was making his report to his principals that he knew the report was going to the members of the German Government, his reports, he admitted, were strictly political advice, advising as to what kind of speeches the members of the German Government should make for consumption in the United States; advising them on different questions. That will all be shown in the evidence which this subcommittee obtained from him during the short while it was engaged in this investigation.³⁵

After the House and Senate passed different versions of the bills between August 1937 and May 1938,³⁶ they reconciled their differences and President Roosevelt signed the act into law on June 8, 1938.³⁷

As enacted,³⁸ FARA required certain persons—agents of a foreign principal³⁹—to register with the Secretary of State and disclose certain information when they represented foreign entities—foreign principals⁴⁰—as “a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney.”⁴¹ Registration was required to be made “under oath” within 30 days and include information about the registrant’s contact information, contacts, compensation, and foreign principals represented.⁴² Recertification was required every six months⁴³ and the Secretary of State was required to keep records permanently.⁴⁴ The law also carried penalties for noncompliance that included the potential for fines and prison time.⁴⁵

³⁵ Testimony of Representative John McCormack, in U.S. Congress, House Committee on the Judiciary, Subcommittee No. 1, *To Require the Registration of Certain Persons Employed by Agencies To Disseminate Propaganda in the U.S.*, hearing on H.R. 1591, 75th Cong., 1st sess., June 16, 1937, unpublished (Washington: GPO, 1937), p. 4.

³⁶ For more information on the debate and legislative process, see “Foreign Propaganda,” debate in the House, *Congressional Record*, vol. 81, part 7 (August 3, 1937), pp. 8037-8038; “Dissemination of Propaganda in the United States,” debate in the Senate, *Congressional Record*, vol. 83, part 6 (May 17, 1938), pp. 7052-7053; “Registration of Persons Employed to Disseminate Propaganda—Conference Report,” *Congressional Record*, vol. 83, part 7 (May 27, 1938), pp. 7619-7620; and “Registration of Certain Persons Disseminating Propaganda,” *Congressional Record*, vol. 83, part 7 (June 2, 1938), pp. 8021-8022.

³⁷ “Message from the President,” *Congressional Record*, vol. 83, part 8 (June 9, 1938), p. 8636.

³⁸ P.L. 75-583, 52 Stat. 631, June 8, 1938.

³⁹ P.L. 75-853, §1(d). An agent of a foreign principal means “any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal or for any domestic organization subsidized directly or indirectly in whole or in part by a foreign principal. Such term shall not include a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, nor a person, other than a public-relations counsel, or publicity agent, performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal.”

⁴⁰ P.L. 75-853, §1(c). A foreign principal means “the government of a foreign country, a political party of a foreign country, a person domiciled abroad, or any foreign business, partnership, association, corporation, or political organization.”

⁴¹ P.L. 75-853, §1(d).

⁴² P.L. 75-853, §2.

⁴³ P.L. 75-853, §3.

⁴⁴ P.L. 75-853, §4.

⁴⁵ P.L. 75-853, §5.

Amendments to FARA

As enacted, FARA required the registration and disclosure of information by individuals and groups engaged in propaganda activities in the United States on behalf of a foreign principal client. After approximately a year of implementation, the law was amended to make some technical changes to

5. broaden the definition of “foreign principal” to include domestic entities funded by foreign principals;
6. expand the definition of “agent of a foreign principal” to include individuals compensated by or under the direction of a foreign principal;
7. clarify the application of the accredited or consular officers of foreign governments exemption to require that such individuals must be on record with the State Department; and
8. allow the Secretary of State to remove from public scrutiny records from terminated foreign agents.⁴⁶

Since these amendments, the law has been substantially revised on three additional occasions to respond to the changing nature of representation of foreign entities in the United States. These changes, which occurred in 1942, 1966, and 1995, have reoriented the law away from propaganda activities and toward foreign advocacy and lobbying. This section provides an overview of these amendments and how they changed FARA.

1942 Amendments

As the implementation of FARA, as amended, continued, observers began to note that even with the 1939 modifications the law was not necessarily capturing the information thought necessary to understand foreign propaganda efforts.⁴⁷ As early as July 1937—before the enactment of FARA in 1938—the House had empaneled a second Un-American Activities Committee to continue the investigations begun by the McCormack committee in 1934.⁴⁸ Chaired by Representative Martin Dies, Jr., the committee was charged, in part, with differentiating between anti-American propaganda that was designed to subvert the government and ideas that might be “unorthodox,” but which were intended to strengthen the American form of democracy.⁴⁹

The Dies committee issued several reports in the early 1940s,⁵⁰ and its work indirectly led to an effort to make FARA more effective. Although FARA had resulted in “some successful

⁴⁶ U.S. Congress, House Committee on the Judiciary, *Amending the Act Requiring Registration of Agents of Foreign Principals*, report to accompany H.R. 5988, 76th Cong., 1st sess., May 31, 1939, H.Rept. 711 (Washington: GPO, 1939), pp. 1-2. See also, U.S. Congress, Senate, Committee on the Judiciary, *Amending the Act Requiring Registration of Agents of Foreign Principals*, report to accompany H.R. 5988, 76th Cong., 1st sess., July 25, 1939, S.Rept. 902 (Washington: GPO, 1939), pp. 1-2.

⁴⁷ Bruce Lannes Smith, “Democratic Control of Propaganda through Registration and Disclosure I,” *Public Opinion Quarterly*, vol. 6, no. 1 (Spring 1942), pp. 27-40; and Bruce Lannes Smith “Democratic Control of Propaganda through Registration and Disclosure II,” *Public Opinion Quarterly*, vol. 7, no. 4 (Winter 1943), pp. 707-719.

⁴⁸ H.Res. 282 (75th Congress).

⁴⁹ U.S. Congress, House, Special Committee on Un-American Activities, *Investigation of Un-American Propaganda Activities in the United States*, report pursuant to H.Res. 282 (75th Cong.) and H.Res. 26 (76th Cong.), 77th Cong., 1st sess., H.Rept. 1, January 3, 1941 (Washington: GPO, 1941), p. 1.

⁵⁰ U.S. Congress, House, Special Committee on Un-American Activities, *Investigation of Un-American Propaganda activities in the United States*, report pursuant to H.Res. 282 (75th Cong.) and H.Res. 26 (76th Cong.), 76th Cong., 3rd

prosecutions under the existing statute,”⁵¹ the House Judiciary Committee believed “that the act can be made even more effective and valuable in the regulation of the important activities which it covers.”⁵²

In late 1941, Representative Hatton Sumners introduced H.R. 6269 to amend FARA

to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals, so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their association and activities.⁵³

Although H.R. 6269 passed Congress in January 1942,⁵⁴ President Franklin D. Roosevelt vetoed the measure.⁵⁵ In his veto message, President Roosevelt wrote:

This bill was drafted in peacetime to protect a nation at peace. ... The bill, however, obviously was not drafted with a view to the situation created by the Axis assault upon our country and our entry into the war in fighting partnership with 25 united nations and in active cooperation with other nations whose defense we deem vital to our own defense.

To achieve victory we must be certain there is a minimum of interference with the strengthening and perfecting of joint action. Active collaboration of a military or economic nature with friendly countries requires the fullest and most constant exchange of representatives between us. ... It is far from clear that the requirements of this legislation would not in many instance be unnecessary, inappropriate, and onerous in respect to the representatives of friendly nations who are constantly coming to and from the United States to cooperate with us.⁵⁶

sess., January 3, 1940, H.Rept. 1476 (Washington: GPO, 1940); and U.S. Congress, House, Special Committee on Un-American Activities, *Special Report on Subversive Activities Aimed at Destroying Our Representative Form of Government*, report pursuant to H.Res. 282 (75th Cong.) and H.Res. 26 (76th Cong.), 77th Cong., 2nd sess., June 25, 1942, H.Rept. 2277 (Washington: GPO, 1941).

⁵¹ U.S. Congress, House, Committee on the Judiciary, *Amending the Act Requiring the Registration of Foreign Agents*, report to accompany H.R. 6269, 77th Cong., 1st sess., December 18, 1941, H.Rept. 1547 (Washington: GPO, 1941), p. 1.

⁵² *Ibid.*, pp. 1-2.

⁵³ H.R. 6269 (77th Congress); “Public Bills and Resolutions,” *Congressional Record*, vol. 87, part 9 (December 17, 1941), p. 9949. H.R. 6269 was reported by the House Judiciary Committee on December 18, 1941; passed the Senate, with amendments, on January 12, 1942; and the conference report was agreed to in the House and Senate on January 28, 1942. Senate passage: “Registration of Propagandists,” *Congressional Record*, Senate debate, vol. 88, part 1 (January 12, 1942); Senate agreement to Conference Report: “Registration of Propagandists—Conference Report,” *Congressional Record*, vol. 88, part 1 (January 28, 1942), p. 791; and House agreement to conference report: “Amending the Foreign Agents’ Registration Act,” *Congressional Record*, vol. 88, part 1 (January 28, 1942), p. 797.

⁵⁴ U.S. Congress, House, Committee on the Judiciary, *Amending the Act Requiring Registration of Foreign Agents*, report to accompany S. 2399, 77th Cong., 2nd sess., April 20, 1942, H.Rept. 2038 (Washington: GPO, 1942), p. 1.

⁵⁵ U.S. Congress, House, *Message from the President of the United States Transmitting without Approval, H.R. 6269, A Bill to Amend the Act Entitled “An Act to Require the Registration of Certain Persons Employed by Agencies to Disseminate Propaganda in the United States, and for Other Purposes,” Approved June 8, 1938, as Amended*, 77th Cong., 2nd sess., February 9, 1942, H.Doc. 611 (Washington: GPO, 1942).

⁵⁶ *Ibid.*, pp. 1-2.

Congress responded with new legislation to address President Roosevelt's concerns by adding an exemption for "agents of countries deemed vital to defense of the U.S."⁵⁷ President Roosevelt signed the new bill into law on April 29, 1942.⁵⁸

As enacted, the amendments to FARA expanded the definitions of "persons who are considered to be foreign principals and foreign agents."⁵⁹ The amendments also

- transferred administration of the law to the Department of Justice from the Department of State;⁶⁰
- expanded information required in initial registration statements and supplemental disclosures;⁶¹
- created exemptions for accredited diplomats or consular officers, non-public relations counsels, officials of recognized foreign governments, diplomatic or consular staff, individuals engaged in bona fide trade, religious, and educational activities, and agents of countries deemed vital to the defense of the United States;⁶²
- defined "political propaganda"⁶³ and required submission of propaganda materials to the Attorney General and the Library of Congress, with appropriate labeling;⁶⁴
- required preservation of records and allowance for public inspection;⁶⁵ and
- established penalties for noncompliance.⁶⁶

1966 Amendments

Following the 1942 amendments, FARA implementation and enforcement focused on propaganda and the dissemination of information potentially harmful to America's democracy.⁶⁷ After World War II, Nazi propaganda was no longer a specific worry and, as a result, the statute reportedly

⁵⁷ U.S. Congress, Senate, Committee on the Judiciary, *Amendments to the Act of June 8, 1938, as Amended, Requiring the Registration of Agents of Foreign Principals*, report to accompany S. 2399, 77th Cong., 2nd sess., S.Rept. 1227 (Washington: GPO, 1942), p. 3; and U.S. Congress, House, Committee on the Judiciary, *Amending the Act Requiring Registration of Foreign Agents*, report to accompany S. 2399, 77th Cong., 2nd sess., H.Rept. 2038 (Washington: GPO, 1942), p. 3.

⁵⁸ "Registering of Persons Disseminating Propaganda," *Congressional Record*, vol. 77, part 3 (March 30, 1942), p. 3178; and P.L. 532, 56 Stat. 248, April 29, 1942.

⁵⁹ U.S. Department of Justice, *The Foreign Agents Registration Act of 1938, As Amended and the Rules and Regulations Prescribed by the Attorney General*, Washington, DC, 1942, p. 2.

⁶⁰ P.L. 532, §2.

⁶¹ P.L. 532, §1(2).

⁶² P.L. 532, §1(3).

⁶³ P.L. 532, §1(1)(j).

⁶⁴ P.L. 532, §1(4).

⁶⁵ P.L. 532, §1(5)-(6).

⁶⁶ P.L. 532, §1(8).

⁶⁷ David L. Simiele, "Disclosure Under the Foreign Agents Registration Act of 1938, as Amended, Note," *Western Reserve Law Review*, vol. 14, issue 3 (June 1963), p. 579-590.

went largely unenforced by the Department of Justice,⁶⁸ with approximately nine FARA cases prosecuted by the department through the early 1960s.⁶⁹

In the 1960s, during congressional consideration of the Sugar Act Amendments of 1962, “lobbying by representatives of foreign governments reached something of an all-time high in intensity.”⁷⁰ As a result of perceived “aggressive lobbying by foreign representatives over the periodic reallocation of the sugar quota,”⁷¹ Congress began to take an active interest in potentially updating FARA to address these types of activities.

At that time, the Senate Foreign Relations Committee authorized a staff investigation into “nondiplomatic activities of representatives of foreign governments, and the extent to which such representatives attempt to influence the policies of the United States and affect the national interest.”⁷² The staff investigation concluded “there has been an increasing number of incidents involving attempts by foreign governments, or their agents, to influence the conduct of American foreign policy by techniques outside normal diplomatic channels.”⁷³ Legislation to address the staff report’s concerns was introduced in 1963 to “deal with certain new types of activities by foreign agents with which the original drafters may not have been familiar.”⁷⁴

In the 89th Congress (1965-1966), legislation was reintroduced to amend FARA and shift its focus from propaganda to advocacy activities. In his remarks during the Senate debate, Senator Fulbright summarized why the bill was necessary. He said:

The basic purpose of the bill is to update the Foreign Agents Registration Act to reflect the changes in the nature of the U.S. role in world affairs today. A quarter of a century ago, the original targets of this act were the subversive agent and propagandist. But as our interests through the world have multiplied, the efforts of foreign and domestic politics have become correspondingly greater and more subtle. The place of the old foreign agent has been taken by the professional lobbyists and public opinion manipulators whose object is not [to] subvert the Government but to influence its politics to the satisfaction of his client. The trench coat has been replaced by the gray flannel suit.⁷⁵

President Lyndon Johnson signed the FARA amendment into law on June 30, 1966.⁷⁶

⁶⁸ Francis R. O'Hara, “The Foreign Agents Registration Act—The Spotlight of Pitiless Publicity,” *Villanova Law Review*, vol. 10, no. 3 (Spring 1965), p. 441.

⁶⁹ *Ibid.*, p. 441; and “Attorneys under the Foreign Agents Registration Act of 1938,” *Harvard Law Review* vol. 78, no. 3 (January 1965), pp. 619-634.

⁷⁰ Daniel M. Berman and Robert A. Heineman, “Lobbying by Foreign Governments on the Sugar Act Amendments of 1962,” *Law and Contemporary Problems*, vol. 26, no. 2 (Spring 1963), p. 416, at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2961&context=lcp>.

⁷¹ U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, *The Federal Lobbying Disclosure Laws*, 102nd Cong., 1st sess., June 20, July 16, and September 25, 1991, S.Hrg. 102-377 (Washington: GPO, 1991), p. 487.

⁷² U.S. Congress, Senate Committee on Foreign Relations, *Nondiplomatic Activities of Representatives of Foreign Governments*, committee print, 87th Cong., 2nd sess., July 1962 (Washington: GPO, 1962), p. v.

⁷³ *Ibid.*

⁷⁴ Sen. James Fulbright, “Amendment of Foreign Agents Registration Act of 1938,” *Congressional Record*, vol. 109, part 12 (September 10, 1963), p. 16598. Sen. Fulbright, along with Sen. Bourke Hickenlooper, introduced S. 2136 (88th Congress). It passed the Senate in July 1963, but was not considered by the House. U.S. Congress, Senate Committee on Foreign Relations, *Foreign Agents Registration Act*, hearing on S. 693, 89th Cong., 1st sess., February 16, 1965 (Washington: GPO, 1965), p. 5.

⁷⁵ Sen. James Fulbright, “Amendment of Foreign Agents Registration Act,” Senate debate, *Congressional Record*, vol. 111, part 5 (April 5, 1965), p. 6984.

⁷⁶ “Messages from the President—Approval of Bills and Joint Resolution,” *Congressional Record*, vol. 112, part 11

As enacted, the FARA amendment was

intended to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political. Such public disclosures as required by the act will permit the Government and the people of the United States to be informed as to the identities and activities of such persons and so be better able to appraise them and the purposes for which they act.⁷⁷

Specifically, the amendments to FARA refocused the law on advocacy rather than propaganda.⁷⁸ The amendments

1. expanded several definitions, including the terms “foreign principal” and “agent of a foreign principal,” and added definitions for “political activities” and “political consultant”;⁷⁹
2. clarified exemptions for individuals and companies that are not required to register under the law and provided that the Attorney General can provide for exemptions by regulation;⁸⁰
3. specified a registration timeline and the content of registration and disclosure statements, including details of campaign contributions;⁸¹
4. changed the requirements for labeling and filing of political propaganda;⁸² and
5. provided for enforcement authority to the Attorney General and specified maximum fines and jail time for noncompliance.⁸³

1995 Amendments

In December 1995, Congress created the Lobbying Disclosure Act (LDA) as a replacement for the Regulation of Lobbying Act of 1946.⁸⁴ The LDA, in the words of one Senator during floor debate, “tightens up the registration and disclosure requirements for the Washington-based

(July 11, 1966), p. 15066. The 1966 amendment (S. 693) passed the Senate on April 5, 1965 (“Amendment to Foreign Agents Registration Act of 1938, as Amended,” Senate debate, *Congressional Record*, vol. 111, part 5 [April 5, 1965], pp. 6982-6994), were reported by the House Judiciary Committee on May 3, 1966 (“Reports of Committees on Public Bills and Resolutions,” *Congressional Record*, vol. 112, part 8 [May 3, 1966], p. 9785), and passed the House on May 16, 1966, with amendment (Foreign Agents Registration Act Amendments,” House debate, *Congressional Record*, vol. 112, part 8 [May 16, 1966], pp. 10534-10539). Following a conference committee, the conference report was adopted by the Senate and the House on June 21, 1966 (“Amendment of Foreign Agents Registration Act of 1938—Conference Report,” *Congressional Record*, vol. 112, part 10 [June 21, 1966], p. 13827-13828); “Foreign Agents Registration Act Amendments,” House debate, *Congressional Record*, vol. 112, part 10 (June 21, 1966), pp. 13713-13714; and U.S. Congress, House, U.S. Congress, House, *Foreign Agents Registration Act Amendments*, conference report to accompany S. 693, 89th Cong., 2nd sess., June 16, 1966, H.Rept. 1632 (Washington: GPO, 1966).

⁷⁷ U.S. Congress, House Committee on the Judiciary, *Foreign Agents Registration Act Amendments*, report to accompany S. 693, 89th Cong., 2nd sess., May 1966, H.Rept. 1470 (Washington: GPO, 1966), p. 2.

⁷⁸ P.L. 89-486, 80 Stat. 244, July 4, 1966.

⁷⁹ P.L. 89-486, §1(1)-(5).

⁸⁰ P.L. 89-486, §1(5), §2(7), and §3.

⁸¹ P.L. 89-486, §2.

⁸² P.L. 89-486, §4.

⁸³ P.L. 89-486, §7.

⁸⁴ P.L. 104-65, 109 Stat. 691, December 19, 1995; 2 U.S.C. §§1601-1614. For more information on the Lobbying Disclosure Act, see CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus.

lobbyists, without infringing upon the rights of ordinary citizens at the grassroots to petition their Government.”⁸⁵ Although LDA focused on domestic lobbying, it also contained four FARA amendments. As summarized in a House Judiciary Committee report on H.R. 2564, companion legislation to the measure that became the LDA, those amendments were as follows:

(1) FARA is limited to agents of foreign governments and political parties. Lobbyists of foreign corporations, partnerships, associations, and individuals are required to register under the Lobbying Disclosure Act, where applicable, but not under FARA.

(2) The so-called “U.S. subsidiary exemption” is eliminated from FARA. This Subsection grants an exemption to activities on behalf of a foreign-owned company in the United States that further the bona fide commercial, industrial, or financial interests of the U.S. subsidiary.

(3) The applicability of the so-called “lawyers’ exemption” is clarified by changing the exemption’s application only to communications with agency officials in the context of those specific instances set out in this amendment. These include judicial proceedings, law enforcement proceedings, and agency proceedings required by statute or regulation to be conducted on the record.

(4) The term “political propaganda” is eliminated from the Act, and replaced by the term “informational materials.”⁸⁶

In 2007, the Honest Leadership and Open Government Act (HLOGA) further amended FARA.⁸⁷ The HLOGA amendments required the Attorney General to develop an electronic filing system and to make the accompanying database available to the public.⁸⁸

Summary of Current FARA Provisions

Today, FARA is generally focused on individuals conducting political or advocacy work on behalf of “foreign principals” within the United States. These “agents of a foreign principal” are required to register with the Department of Justice and to disclose their relationships, activities, receipts, and disbursements in support of their advocacy or public relations activities. FARA specifies the type of activities covered and the information required to be reported to the DOJ on a semiannual basis, how DOJ should administer and enforce the law, and penalties associated with noncompliance. Codified at 22 U.S.C. §§611-621, a summary of each FARA section is contained below.⁸⁹

Section 611—Definitions

Section 611 provides definitions used throughout the law. These definitions include the specifics of a “foreign principal” and “agent of a foreign principal,” among other technical terms. For a more detailed summary of all of the definitions in the law, see the **Appendix**.

⁸⁵ Sen. Robert Dole, “Lobbying Reform,” remarks in the Senate, *Congressional Record*, vol. 141, part 14 (July 25, 1995), p. 20193.

⁸⁶ U.S. Congress, House, Committee on the Judiciary, *Lobbying Disclosure Act of 1995*, report to accompany H.R. 2564, 104th Cong., 1st sess., H.Rept. 104-339, Part 1, November 14, 1995 (Washington: GPO, 1995), p. 21.

⁸⁷ P.L. 110-81, §212, 121 Stat. 749, September 14, 2007.

⁸⁸ *Ibid*.

⁸⁹ For a legal analysis of FARA, see CRS In Focus IF11439, *Foreign Agents Registration Act (FARA): A Legal Overview*, by Jacob D. Shelly.

Although all of the definitions found in 22 U.S.C. §611 are important for the administration and enforcement of FARA, two definitions are essential to understanding the advocacy relationship that FARA aims to capture. They are “foreign principal” and “agent of a foreign principal.”

Foreign Principal

(b) The term “foreign principal” includes—

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country [§611(b)].

Agent of a Foreign Principal

(c) Except [sic] as provided in subsection (d) of this section,⁹⁰ the term “agent of a foreign principal” means—

- (1) 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 or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and 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; and
- (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection [§611(c)].

Section 612—Registration Statement

Individuals who meet the definition of an “agent of a foreign principal” are required to file a registration statement within 10 days of agreeing to become an agent,⁹¹ and then file supplemental statements every six months thereafter.⁹² Statements are filed with the Attorney General through

⁹⁰ 22 U.S.C. §611(d) provides that “(d) The term ‘agent of a foreign principal’ does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter.”

⁹¹ 22 U.S.C. §612(a).

⁹² 22 U.S.C. §612(b).

the DOJ's National Security Division and the FARA Unit.⁹³ Individuals who are exempted under 22 U.S.C. §613 (see "Section 613—Exemptions" below) do not have to file either a registration statement or supplemental statements.

Pursuant to 22 U.S.C. §612, a registration statement includes

- the registrant's name and both personal and business addresses;
- the registrant's status, including nationality for all individuals, partnerships, and corporate directors or officers;
- a statement of the nature of the registrant's business, including a complete list of employees, the nature of their work, and the name and address of every foreign principal the registrant represents;
- copies of the registrant's written agreement with a foreign principal and conditions for all oral agreements;
- the nature and amount of contributions, income, money, or other items of value received from a foreign principal; and
- a detailed statement of spending connected with activities for the foreign principal.

All registration and supplemental statements are made under oath,⁹⁴ and must be filed electronically.⁹⁵

Section 613—Exemptions

Certain agents of a foreign principal are exempt from registering under FARA. **Figure 1** shows the exemptions available under 22 U.S.C. §613 and who qualifies for each type of exemption. Potential filers who fall within one of the exemption categories self-select their exemption and do not notify the DOJ. Therefore, exempt agents of a foreign principal who claim an exemption do not appear in the FARA database on the Department of Justice website.⁹⁶

⁹³ U.S. Department of Justice, National Security Division, Foreign Agents Registration Act (FARA) Unit, at <https://www.fara.gov>.

⁹⁴ 22 U.S.C. §612(c).

⁹⁵ 22 U.S.C. §612(g). Instructions for filing statements online can be found at U.S. Department of Justice, National Security Division, Foreign Agents Registration Act (FARA) Unit, "Registration Forms and Templates," at <https://www.justice.gov/nsd-fara/fara-forms>.

⁹⁶ U.S. Department of Justice, National Security Division, Foreign Agents Registration Act (FARA) Unit, "Search Filings," at <https://efile.fara.gov/ords/f?p=1235:10>. Filings can also be browsed at <https://efile.fara.gov/ords/f?p=1381:1:13449112022053:.....>.

Figure I. Exemptions to Registration Under the Foreign Agents Registration Act
(22 U.S.C. §613)

EXEMPTION	DEFINITION
Diplomatic or Consular Officers	Duly accredited diplomatic or consular officials, recognized by Department of State, performing official functions.
Official of Foreign Government	Officials of recognized governments who are not public-relations counsel, publicity agent, information-services employee, or citizen of the United States, acting in an official capacity.
Staff Members of Diplomatic or Consular Officers	Any staff member or employee of a duly accredited diplomatic or consular officer, other than a public relations counsel, of a State Department-recognized foreign government performing official functions.
Private and Nonpolitical Activities; Solicitation of Funds	“Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering.”
Religious, Scholastic, or Scientific Pursuits	Person engaged “only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.”
Defense of Foreign Government Vital to United States Defense	Agents “whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States,” if certain specified conditions are met.
Qualified to Practice Law	Any person qualified to practice law who engages “in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States.” Does not include advocacy activity outside judicial proceedings, criminal or civil law enforcement inquiries, investigations, or statutorily required agency proceedings.
LDA Filer	Individual registered under LDA not required to register under FARA.

Source: CRS analysis of 22 U.S.C. §613.

Section 614—Filing and Labeling of Political Propaganda

Although the 1966 amendments to FARA reoriented the law toward advocacy activities and away from the regulation of political propaganda, FARA continues to require that political propaganda be filed with the DOJ and be labeled.⁹⁷ Also called “informational materials,” copies of these materials must be filed by agents of a foreign principal within 48 hours and ensure that the following labeling language is included:

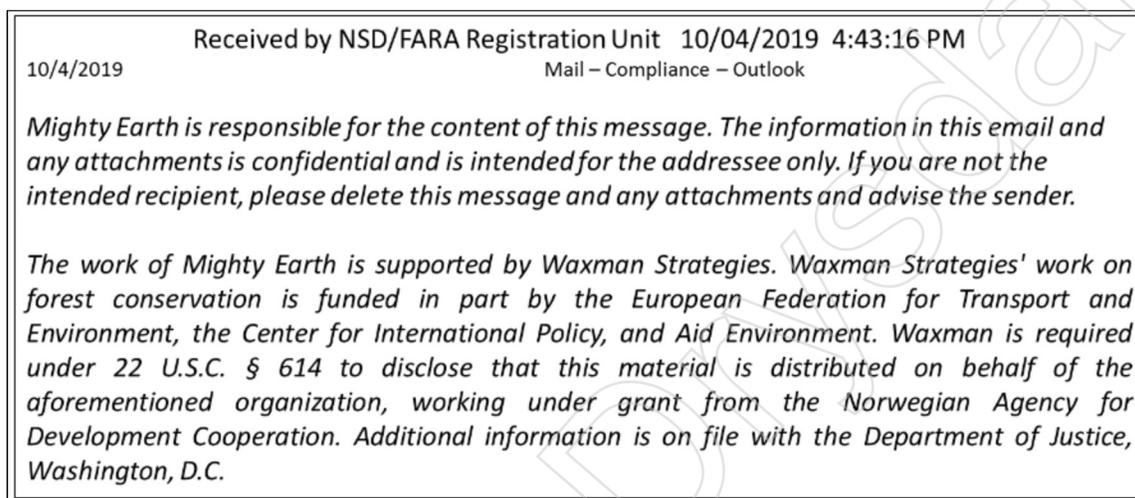
This material is distributed by (name of registrant) on behalf of (name of foreign principal).
Additional information is available at the Department of Justice, Washington, DC.⁹⁸

⁹⁷ 22 U.S.C. §614.

⁹⁸ U.S. Department of Justice, National Security Division, Foreign Agents Registration Act (FARA) Unit, “What are the Filing and Labeling Requirements for Informational Materials?” *General FARA Frequently Asked Questions*, at <https://www.justice.gov/nsd-fara/general-fara-frequently-asked-questions>. For additional regulations on the labeling of informational materials, see 28 C.F.R. §5.402, at https://www.ecfr.gov/cgi-bin/text-idx?SID=55bbcbd4f61d657ca4ec8a5862d848e1&mc=true&node=se28.1.5_1402&rgn=div8.

Further, the DOJ has determined that *all* informational materials disseminated by registered foreign agents, including those posted on social media or sent by text message, “must contain a conspicuous label if such media are used as instruments to disseminate informational materials.”⁹⁹ That label can be on a web home page, a running header or footer on a website, or on an “About Us” page.¹⁰⁰ These labels are a separate matter from campaign finance disclosures (e.g., political advertisements).¹⁰¹ **Figure 2** provides an example of a disclaimer from a FARA informational materials filing.

Figure 2. Example of FARA Informational Materials Label Requirements



Source: U.S. Department of Justice, “Protest Monday-Cargill: Don’t Let the Amazon Burn,” filing by the Center for International Policy (under grant from the Norwegian Agency for Development Cooperation), by Waxman Strategies, at <https://efile.fara.gov/docs/6710-Informational-Materials-20191004-100.pdf>.

Section 615—Books and Records

FARA requires that all agents of a foreign principal “keep and preserve ... such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions” of the law.¹⁰² Records that must be maintained include all correspondence about activities taken on behalf of a foreign principal, correspondence about political activities, original copies of contracts, names of individuals to whom informational materials have been transmitted, and bookkeeping and financial records.¹⁰³ Records must be available for inspection,¹⁰⁴ and must be kept for three years after the foreign principal-agent relationship has been terminated.¹⁰⁵

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ For more information on labels for campaign political advertisements, see CRS In Focus IF11398, *Campaign Finance Law: Disclosure and Disclaimer Requirements for Political Campaign Advertising*, by L. Paige Whitaker; and CRS In Focus IF10758, *Online Political Advertising: Disclaimers and Policy Issues*, by R. Sam Garrett.

¹⁰² 22 U.S.C. §615.

¹⁰³ 28 C.F.R. §5.500(a).

¹⁰⁴ 28 C.F.R. §5.500(b).

¹⁰⁵ 28 C.F.R. §5.500(c).

Section 616—Public Examination of Official Records; Transmittal of Records and Information

The law requires the Attorney General to maintain permanent copies of all registration statements and to provide copies to the public, the Secretary of State, other executive agencies, and congressional committees.¹⁰⁶ The Attorney General is also required to maintain a publicly available, internet accessible, searchable, and downloadable database.¹⁰⁷

Section 617—Liability of Officers

In addition to individual registration requirements, FARA requires that firms or other entities that are agents of a foreign principal are also required to register. This section specifically requires that the entities' officers or directors are "under obligation" to ensure the agent of a foreign principal is registered and could face prosecution if they do not comply with the law.¹⁰⁸

Section 618—Enforcement and Penalties

Violations of FARA carry the potential for fines or imprisonment. Any person who willfully violates the law or willfully makes false statements in registration or supplemental statements upon conviction may "be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both."¹⁰⁹ Violating provisions of the filing and labeling requirements for political propaganda,¹¹⁰ failing to correct deficient registration statements, or having a contingent fee arrangement with a foreign principal¹¹¹ carry potential penalties of up to a \$5,000 fine or six months in prison.¹¹²

Section 619—Territorial Applicability of Subchapter

FARA applies in all of the "States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States."¹¹³

¹⁰⁶ 22 U.S.C. §616(a)-(c).

¹⁰⁷ 22 U.S.C. §616(d). That database can be browsed at <https://efile.fara.gov/ords/f?p=1381:1:9405883694077:::>, and searched at <https://efile.fara.gov/ords/f?p=1235:10>.

¹⁰⁸ 22 U.S.C. §617.

¹⁰⁹ 22 U.S.C. §618(a).

¹¹⁰ 22 U.S.C. §614(b) and (e)-(f).

¹¹¹ 22 U.S.C. §618(g) and (h).

¹¹² 22 U.S.C. §618(a).

¹¹³ 22 U.S.C. §619. The Territories include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The Canal Zone is the Panama Canal Zone as established by the Panama Canal Treaty of 1977. For information, see 22 U.S.C. §3602.

Section 620—Rules and Regulations

Authorizes the Attorney General to establish regulations to carry out the law.¹¹⁴ The regulations for FARA are located at 28 C.F.R. §§5.1-5.1101.¹¹⁵

Section 621—Reports to Congress

Every six months, the Attorney General is required to submit a report to Congress on the administration of FARA, including registrations filed under the law and the “nature, sources and content of political propaganda disseminated and distributed.”¹¹⁶ Past reports to Congress are on the FARA website at <https://www.justice.gov/nsd-fara/fara-reports-congress>.

Recent Legislative Proposals to Amend FARA

In recent years, interest in FARA and its potential to identify foreign engagement in advocacy activities and information sharing has increased.¹¹⁷ Reflecting that interest, some Members of Congress have introduced multiple measures in the past several Congresses to amend all or parts of FARA.

A review of these bills reveals several trends in how Members of Congress would amend FARA or its implementation by the DOJ. These proposals coincide with perceived trends in how foreign principals, through foreign agents, are engaged in advocacy work and the dissemination of informational materials.

This section discusses the major proposals identified in introduced legislation.

Registration and Disclosure Requirements

Under FARA, foreign agents include individuals or firms who have a contractual relationship with a foreign principal.¹¹⁸ These individuals or firms are generally required to register with the Department of Justice.¹¹⁹ Some studies of FARA have indicated that current registration and disclosure requirements might not sufficiently capture the nature and scope of foreign lobbying and information dissemination.¹²⁰ In recent Congresses, most proposals that address FARA

¹¹⁴ 22 U.S.C. §620.

¹¹⁵ 28 C.F.R. §§5.1-5.1101 can be found at <https://www.ecfr.gov/cgi-bin/text-idx?SID=259e3a91dffa3826a993f58ddfc90147&mc=true&node=pt28.1.5&rgn=div5>.

¹¹⁶ 22 U.S.C. §621.

¹¹⁷ A search of Congress.gov (both full text and bill summaries) from the 111th Congress (2009-2010) to the 116th Congress (2019-2020, through April 24, 2020) finds approximately 90 measures introduced that would amend FARA. For a full search, see U.S. Congress, Congress.gov, at <https://www.congress.gov/quick-search/legislation?wordsPhrases=%22foreign+agents+registration+act%22&include=on&wordVariants=on&congresses%5B%5D=116&congresses%5B%5D=115&congresses%5B%5D=114&congresses%5B%5D=113&congresses%5B%5D=112&congresses%5B%5D=111&legislationNumbers=&legislativeAction=&sponsor=on&representative=&senator=&searchResultViewType=compact&KWICView=false>. The search began in the 111th Congress, because it was the first Congress after the enactment of minor FARA reforms in the Honest Leadership and Open Government Act (HLOGA), P.L. 110-81, §212, 121 Stat. 749, September 14, 2007.

¹¹⁸ 22 U.S.C. §§611-612.

¹¹⁹ Certain individuals and groups are exempt from FARA registration. For more information on exemptions, see “Section 613—Exemptions.”

¹²⁰ For example, see Yuk K. Law, “The Foreign Agents Registration Act: A New Standard for Determining Agency,”

registration and disclosure do not propose to change the type of information currently required to be disclosed under 22 U.S.C. §612, but rather focus on how often reports are filed and how filings are made publicly accessible. For example, several proposals would amend FARA and require quarterly, rather than semiannual, reports.¹²¹ Proponents believe that quarterly reports would align FARA reporting with LDA reporting, which is already required on a quarterly basis. They also argue that more frequent disclosure would increase transparency of foreign activity and provide additional information to the Department of Justice for enforcement, when necessary.¹²² Disclosure every six months would maintain the status quo and continue to provide information at the same rate as currently required under FARA.

In addition to changing reporting time frames, some legislative proposals would amend FARA to require that DOJ provide registration and disclosure statements in a digitized, searchable format on its FARA website.¹²³ Currently, FARA filings are electronically available and are searchable by registrant number, registrant name, registration start and end date, status (active or terminated), and when the DOJ received the filing.¹²⁴ Other information required on FARA forms is not currently searchable. This includes registrant occupation, salary, or contributions from foreign principals, among others.

Providing digitized, searchable registration and disclosure forms would arguably allow information to be more readily accessible to the public, thus providing additional potential transparency to information about foreign agents and their activities on behalf of foreign principals. Requiring a change in the DOJ's collection and display of information, however, could have additional administrative costs associated with the filing, coding, maintenance, display, search, and download of data.

Labeling of Informational Materials

As mentioned above under “Section 614—Filing and Labeling of Political Propaganda,” FARA requires the disclosure of certain informational materials to the DOJ. As social media has become a more popular form of communication and information dissemination, questions have arisen about whether social media communications are, or should be, covered as informational materials under FARA.¹²⁵ To address this question, several bills have been introduced that would formally define email and social media posts as “informational materials” under FARA.¹²⁶

Fordham International Law Journal, vol., 6, issue 2 (1982), pp. 367-370.

¹²¹ For example, see S. 2039 (115th Congress), introduced October 31, 2017; and H.R. 4170 (115th Congress), introduced October 31, 2017. S. 2039 was referred to the Senate Foreign Relations Committee and did not receive further consideration. On January 17, 2018, the House Judiciary Committee marked up H.R. 4170, and ordered the bill to be reported.

¹²² Rep. David Cicilline, remarks at U.S. Congress, House, Committee on the Judiciary, “Markup of H.R. 4170, The ‘Disclosing Foreign Influence Act,’” January 17, 2018, p. 25, at <https://docs.house.gov/meetings/JU/JU00/20180117/106786/HMKP-115-JU00-Transcript-20180117.pdf>.

¹²³ See, for example, H.R. 1566 (116th Congress), introduced on March 6, 2019; H.R. 1, §7104 (116th Congress), passed the House on March 8, 2019. For more information on H.R. 1, including its FARA provisions, see CRS In Focus IF11097, *H.R. 1: Overview and Related CRS Products*, coordinated by R. Sam Garrett.

¹²⁴ U.S. Department of Justice, “Search Filings,” at <https://efile.fara.gov/ords/f?p=1235:10>.

¹²⁵ For example, see Joshua R. Fattal, “FARA on Facebook: Modernizing the Foreign Agents Registration Act to Address Propagandists on Social Media,” *New York University Journal of Legislation and Public Policy*, vol. 21, no. 4 (2019), pp. 903-948; and *US v. Concord Management & Consulting LLC* (347 F. Supp. 3d 28), 49, at https://scholar.google.com/scholar_case?case=15089234790502537545&hl=en&as_sdt=6,47&as_vis=1.

¹²⁶ See, for example, H.R. 2811 (115th Congress), introduced on June 7, 2017; and S. 625 (115th Congress), introduced

Officially defining social media posts as informational materials would clarify that a foreign agent would be required to provide the DOJ their social media posts along with other informational materials. Proposed legislation, however, does not address how social media posts might be captured and stored. Currently, if a foreign agent believes that a social media post constitutes informational materials, he or she would capture them as a PDF document and include them in FARA filings.¹²⁷

Should Congress or the DOJ want to capture a more dynamic cache of social media posts, they might consider adopting National Archives and Record Administration (NARA) guidance on managing social media records (Bulletin 2014-02).¹²⁸ The NARA guidance, among other things, specifies how agencies might capture social media information, including the potential for the capture of comments. While such guidance does not currently apply to foreign agents, because they are not a federal agency, NARA's best practices might serve as a guide and may provide the potential for the consistent capture of all types of informational materials. That the DOJ does not currently use NARA standards, however, does not mean that the current FARA unit policy of PDF capture for social media posts is not consistent, only that social media, because it can be dynamically shared, does not necessarily lend itself to the static PDF platform.

Civil Investigative Demand Authority

Since 2007, the Department of Justice reports that it has successfully prosecuted 12 FARA cases, with 8 cases settled since 2017.¹²⁹ In recent years, at least six bills have been introduced to provide the DOJ with *civil investigative demand authority*, to aid the agency in the potential prosecution of FARA cases.¹³⁰ Civil investigative demand (CID) authority is “a type of subpoena that allows the Department of Justice to obtain documents, require responses to interrogatories, and take depositions.”¹³¹ Drawn from a similar provision in the False Claims Act,¹³² CIDs “are effectively administrative subpoenas that the Department [of Justice] may issue to demand documents, interrogatory answers, or moral testimony from any persons with information relevant to an investigation.”¹³³

Proponents of providing DOJ CID authority argue, “CID authority ... will make the job easier, it will enhance enforcement of FARA, and it will pursue the underlying objectives of the legislation

on March 14, 2017.

¹²⁷ U.S. Department of Justice, “How to I File Copies of Social Media?” *Frequently Asked Questions*, at <https://www.justice.gov/nsd-fara/frequently-asked-questions#50>.

¹²⁸ National Archives and Records Administration, “Bulletin 2014-02: Guidance on Managing Social Media Records,” October 25, 2013, at <https://www.archives.gov/records-mgmt/bulletins/2014/2014-02.html>.

¹²⁹ U.S. Department of Justice, “Recent FARA Cases,” at <https://www.justice.gov/nsd-fara/recent-cases>.

¹³⁰ H.R. 2811 (115th Congress), introduced June 7, 2017; H.R. 4170 (115th Congress), introduced October 31, 2017; H.R. 6249 (115th Congress), introduced June 27, 2018; S. 625 (115th Congress), introduced March 14, 2017; S. 2039 (115th Congress), introduced October 31, 2017; and S. 1762 (116th Congress), introduced June 10, 2019.

¹³¹ Rep. Bob Goodlatte, in U.S. Congress, House, Committee on the Judiciary, *Markup of H.R. 4170, The “Disclosing Foreign Influence Act,”* January 17, 2018, p. 5, at <https://docs.house.gov/meetings/JU/JU00/20180117/106786/HMKP-115-JU00-Transcript-20180117.pdf#page=5>.

¹³² 31 U.S.C. §§ 3729-3733. For more information on the False Claims Act, see U.S. Department of Justice, “The False Claims Act,” at <https://www.justice.gov/civil/false-claims-act>; CRS Report R40785, *Qui Tam: The False Claims Act and Related Federal Statutes*, by Charles Doyle; and CRS Report R40786, *Qui Tam: An Abbreviated Look at the False Claims Act and Related Federal Statutes*, by Charles Doyle.

¹³³ Rep. Bob Goodlatte, in U.S. Congress, House, Committee on the Judiciary, *Markup of H.R. 4170, The “Disclosing Foreign Influence Act,”* January 17, 2018, p. 7, at <https://docs.house.gov/meetings/JU/JU00/20180117/106786/HMKP-115-JU00-Transcript-20180117.pdf#page=7>.

that has been a part of our law since 1938.”¹³⁴ Opponents argue that CID could “raise Fourth Amendment and other constitutional concerns.”¹³⁵ In a 2018 House Judiciary Committee markup on a bill that would have granted DOJ CID authority, one Member commented,

We have heard ... that the use of CIDs may effectively be an end-run around the Fourth Amendment, particularly where, as in the case of FARA, criminal prosecution sanctions may result from an investigation.

To obtain documents and other evidence in a criminal investigation, law enforcement officials must get a search warrant issued by a judge after a showing of probable cause that a crime was committed, and that items connected with a crime are likely to be found at the locations specified in the warrant. The CID language in this bill, however, appears to allow law enforcement to obtain such items without any prior judicial authorization, thereby circumventing an important constitutional limit on government authority.¹³⁶

Repealing Exemption Under FARA for LDA Registration

As discussed above (“Section 613—Exemptions”), individuals who are registered lobbyists under the LDA are not required to register under FARA. Pursuant to 22 U.S.C. §613(h), the FARA registration requirement does not apply to

Any agent of a person described in section 611(b)(2) of this title or an entity described in section 611(b)(3) of this title if the agent has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 [2 U.S.C. §1601 et seq.] in connection with the agent’s representation of such person or entity.¹³⁷

Individuals who meet this exemption requirement are not required to register and disclose under FARA if they are already registered under LDA for the same relationship. Further, the Department of Justice’s FARAFAQ clarifies the department’s interpretation of the exemption. It says:

Any agent who is engaged in lobbying activities and is registered under the Lobbying Disclosure Act is exempt from registration under FARA if the representation is not on behalf of a foreign government or foreign political party.¹³⁸

¹³⁴ Rep. Mike Johnson, in U.S. Congress, House, Committee on the Judiciary, Markup of H.R. 4170, *The “Disclosing Foreign Influence Act,”* January 17, 2018, p. 45, at <https://docs.house.gov/meetings/JU/JU00/20180117/106786/HMKP-115-JU00-Transcript-20180117.pdf#page=45>.

¹³⁵ Rep. Jerrold Nadler, in U.S. Congress, House, Committee on the Judiciary, *Markup of H.R. 4170, The “Disclosing Foreign Influence Act,”* January 17, 2018, p. 8, at <https://docs.house.gov/meetings/JU/JU00/20180117/106786/HMKP-115-JU00-Transcript-20180117.pdf#page=8>. The Fourth Amendment protects people against unreasonable searches and seizures by the government. For more information, see United States Courts, “What does the Fourth Amendment Mean?” at <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-0>.

¹³⁶ Rep. Nadler, in U.S. Congress, House, Committee on the Judiciary, *Markup of H.R. 4170, The “Disclosing Foreign Influence Act,”* January 17, 2018, p. 10, at <https://docs.house.gov/meetings/JU/JU00/20180117/106786/HMKP-115-JU00-Transcript-20180117.pdf#page=10>.

¹³⁷ 22 U.S.C. §613(h). Under FARA, the definitions of a foreign principal can be found at 22 U.S.C. §611. Specifically, 22 U.S.C. §611(b)(2)-(3) states that a foreign principal includes “(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”

¹³⁸ U.S. Department of Justice, “Does Everyone Who Acts as an Agent of a Foreign Principal Have to Register?” *General FARA Frequently Asked Questions*, at <https://www.justice.gov/nsd-fara/general-fara-frequently-asked-questions>. Additionally, the DOJ has issued regulations (28 C.F.R. §5.307) for the LDA exemption. It states that “For

Over the past several years, interest in amending FARA to remove the exemption in 22 U.S.C. §613(h) has increased. Most advocates of this change would repeal the entire exemption and require registration under both FARA and LDA.¹³⁹ Some, however, have suggested that the current exemption should be reversed. These advocates believe that foreign agents engaged in lobbying should be required to register under FARA because of their primary relationship to a foreign principal. They also believe that the foreign agents who register under FARA should then be exempt from the LDA.¹⁴⁰

Amending FARA to repeal the LDA exemption, or creating an exemption in LDA for FARA filers, might serve to increase the number of foreign agents who register under FARA. Foreign agents who currently use the LDA exemption have an advocacy relationship that meets the LDA definition of a lobbyist.¹⁴¹ If the LDA exemption were repealed or modified, these foreign agents would conceivably have to register under FARA and LDA, thus arguably providing additional insight into the advocacy work of foreign agents and the number of foreign agents in the United States. Should an exemption in LDA be created to exempt FARA filers, foreign agents would only register under FARA and the LDA data would no longer contain these individuals and firms, thus potentially creating a similar problem of underregistration in LDA for lobbyists who represent foreign clients.

If the FARA exemption was repealed or modified, individuals or firms who represent foreign clients could have to register under both laws. The current exemption schema seemingly prevents potentially duplicate registrations. The issue of registration under both laws could be further complicated because the laws are administered by different entities—the Department of Justice (FARA) and the Clerk of the House of Representatives and the Secretary of the Senate (LDA).¹⁴²

Restricting Certain Former Officials From Acting as Foreign Agents

Current revolving door laws require that former executive and legislative branch officials serve a one-year “cooling off” period before performing certain representational or advocacy activities on behalf of foreign governments or foreign political parties.¹⁴³ In recent years, media reports¹⁴⁴ and

the purpose of section 3(h) of the Act, the burden of establishing that registration under the Lobbying Disclosure Act of 1995, 2 U.S.C. §1601 et seq. (LDA), has been made shall fall upon the person claiming the exemption. The Department of Justice will accept as prima facie evidence of registration a duly executed registration statement filed pursuant to the LDA. In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.”

¹³⁹ For example, see H.R. 2819 (115th Congress), introduced June 7, 2017; H.R. 4170 (115th Congress), introduced October 31, 2017; and H.R. 5150, §605(b) (116th Congress), introduced November 18, 2019.

¹⁴⁰ S. 2482, §5 (115th Congress), introduced March 1, 2018.

¹⁴¹ Charles Lawson, “Shining the ‘Spotlight of Pitiless Publicity’ on Foreign Lobbyists?: Evaluating the Impact of the Lobbying Disclosure Act of 1995 on the Foreign Agents Registration Act,” *Vanderbilt Journal of Translational Law*, vol. 29, no. 5 (November 1996), pp. 1151-1184.

¹⁴² For more information on the administration of the LDA, see CRS Report RL34377, *Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate*, by Jacob R. Straus.

¹⁴³ 18 U.S.C. §207(f). For more information on the revolving door, see, CRS Report R45946, *Executive Branch Service and the “Revolving Door” in Cabinet Departments: Background and Issues for Congress*, by Jacob R. Straus, Executive Branch Service and the “Revolving Door” in Cabinet Departments: Background and Issues for Congress, by Jacob R. Straus.

¹⁴⁴ Nick Robinson, “The Foreign Agents Registration Act is Broken: Stepping Up Enforcement of FARA Before Reforming the Act is a Recipe for Disaster,” *Foreign Policy*, July 22, 2019, at <https://foreignpolicy.com/2019/07/22/the-foreign-agents-registration-act-is-broken>; and Megan R. Wilson, “Foreign Lobbying Law Open to Exploitation,” *The Hill*, November 28, 2017, at <https://thehill.com/business-a-lobbying/362042-foreign-lobbying-law-open-to->

academic studies¹⁴⁵ have evaluated and discussed former federal and congressional officials' use of the "revolving door" to become foreign agents, in some cases concluding that violations of the law might be occurring. To counter the narrative that former executive or congressional officials are not observing statutory "cooling off" periods, legislation has been introduced to alter restrictions on former Members of Congress, congressional employees, and/or executive branch officials from becoming foreign agents. Strategies to limit the registration of these individuals as foreign agents generally take two forms. Some proposals would ban former Members of Congress or congressional employees from receiving certain benefits for any month they are registered as foreign agents.¹⁴⁶ Other proposals would increase the "cooling off" period for congressional or executive branch officials from the current 1 year to 10 years or more.¹⁴⁷

Restricting a former covered official's access to retirement benefits if the official serves as a foreign agent might dissuade individuals from representing foreign clients after their government service. Determining whether a particular individual might be eligible for retirement benefits in a particular month would likely require real-time matching of data to know if a covered official lobbied in a particular period, and communication of those data to benefit administrators.¹⁴⁸

The extension of "cooling off" periods, or bans on former officials from becoming foreign agents, are often designed to discourage covered individuals from representing foreign clients within the period specified by the law. One academic study found that former officials thrive on contacts with their former colleagues or bosses.¹⁴⁹ Another academic study found that when those contacts leave government, the lobbyists are found to be less effective.¹⁵⁰ Subsequently, some see the extension of the "cooling off" period as a strategy to further discourage covered government employees from trying to leverage their experience.¹⁵¹

exploitation.

¹⁴⁵ Jeffrey Lazarus, Amy McKay, and Lindsey Herbel, "Who Walks Through the Revolving Door?: Examining the Lobbying Activities of Former Members of Congress," *Interest Groups & Advocacy*, vol. 5, no. 1 (2016), pp. 82-100; Daniel G. Webber, Jr., "Proposed Revolving Door Restrictions: Limiting Lobbying by Ex-Lawmakers," *Oklahoma City Law Review*, vol. 21, issue 1 (Spring 1996), pp. 29-52; and Michael E. Shepard and Hye Young You, "Exit Strategy: Career Concerns and Revolving Doors in Congress," *American Political Science Review*, vol. 114, no. 1 (February 2020), pp. 270-284.

¹⁴⁶ See, for example, H.R. 3505 (115th Congress), introduced July 27, 2017.

¹⁴⁷ See, for example, H.R. 4343 (112th Congress), introduced March 29, 2012, would have increased "cooling off" periods for the President, Vice President, Members of Congress, and other officers of the executive branch from lobbying for a foreign government for 10 years after leaving office. H.R. 484 (115th Congress), introduced January 12, 2017; and H.R. 6476 (114th Congress), introduced December 8, 2016, would have created lifetime bans on political appointees from becoming agents of a foreign principal. None of these proposals were considered by the House.

¹⁴⁸ For more information on federal retirement benefits and administration, see CRS Report RL30631, *Retirement Benefits for Members of Congress*, by Katelin P. Isaacs; CRS In Focus IF10243, *Civilian Federal Retirement: Current Law, Recent Changes, and Reform Proposals*, by Katelin P. Isaacs; CRS Report 98-972, *Federal Employees' Retirement System: Summary of Recent Trends*, by Katelin P. Isaacs; and CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Katelin P. Isaacs.

¹⁴⁹ Jeffrey Lazarus and Amy Melissa McKay, "Consequences of the Revolving Door: Evaluating the Lobbying Success of Former Congressional Members and Staff," paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 2012, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2141416.

¹⁵⁰ Jordi Blanes I Vidal, Mirko Draca, and Christian Fons-Rosen, "Revolving Door Lobbyists," *American Economic Review*, vol. 102, no. 7 (2012), pp. 3731-3748, at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.102.7.3731>. This study found that "lobbyists connected to US Senators suffer an average 24 percent drop in the generated revenue when their previous employer leaves the Senate." The authors regard these "findings as evidence that connections to powerful, serving politicians are key determinants of the revenue that lobbyists generate" (3732).

¹⁵¹ Robert H. Mundheim, "Conflict of Interest and the Former Government Employee: Rethinking the Revolving Door," *Creighton Law Review*, vol. 14, no. 3 (1980-1981), pp. 707-722.

Extending the “cooling off” period to two years or more could possibly be seen as an unreasonable restriction on post-employment. In some circumstances, however, lifetime bans have been applied to certain individuals engaged in specific capacities during their time in government. For example, 18 U.S.C. §207(b) banned the U.S. Trade Representative and the Deputy Trade Representative for life from “representing, aiding, or advising foreign entities with the intent to influence a decision of a government official.”¹⁵²

Other Considerations for Congress

As discussed above under “Civil Investigative Demand Authority,” historically the enforcement of FARA reportedly has been somewhat limited. In addition to recent legislative proposals, should Congress wish to modify FARA administration or enforcement, at least two options exist. These include potentially providing additional monetary or staffing resources to the DOJ and combining FARA and LDA administration.

Provide Additional Funding and/or Staffing for Administration or Enforcement

Proposed changes to the administration or enforcement of FARA could require additional funding or staffing resources. From an administrative perspective, additional staff might be used to check registration statements and informational material submissions proactively for compliance or review requests to grant exemptions to FARA, should FARA be amended to require approval rather than self-selection for exemptions.¹⁵³

From an enforcement perspective, additional staffing or funding could allow the DOJ additional resources for the investigation and potential prosecution of foreign agents that have not complied with FARA registration or disclosure requirements. Additionally, should the DOJ be given “Civil Investigative Demand Authority,” additional resources might be utilized to carry out that authority.¹⁵⁴ Should new resources not be provided, however, shifting existing resources to FARA enforcement might leave fewer resources for other priorities.

Combine FARA and LDA Administration

Lobbying laws differ for foreign agents (FARA) and domestic lobbyists (LDA), and these two laws are administrated by different entities—FARA by the Department of Justice and LDA by the Clerk of the House and the Secretary of the Senate. To streamline the administration of foreign

¹⁵² U.S. Government Accountability Office, *Laws on Post-Employment Activities, Foreign Representation, and Lobbying*, GAO-10-766, June 2010, p. 7, <https://www.gao.gov/new.items/d10766.pdf>.

¹⁵³ U.S. General Accounting Office, *Foreign Agent Registration: Justice Needs to Improve Program Administration*, GAO/NSIAD-90-250, July 30, 1990, p. 4, at <https://www.gao.gov/assets/220/213011.pdf#page=5>.

¹⁵⁴ *Ibid.*, pp. 2-3. In 1980, GAO recommended that the DOJ “seek authority to (1) give the Justice Department additional enforcement measure, including administrative subpoena powers, and (2) require individuals to submit written notification of all exemption claims prior to engaging in the representation of a foreign principal.” GAO reported that DOJ has sought these authorities. To date, as discussed under “Civil Investigative Demand Authority,” Congress has not enacted legislation to address these concerns. See also, U.S. General Accounting Office, *Improvements Needed in the Administration of Foreign Agent Registration*, ID-80-51, July 31, 1980, <https://www.gao.gov/assets/140/130020.pdf>; and U.S. General Accounting Office, *Foreign Agent Registration: Justice Needs to Improve Program Administration*, GAO/NSIAD-90-250, July 30, 1990, at <https://www.gao.gov/assets/220/213011.pdf>.

agent and lobbying disclosure and registration, Congress might consider transferring LDA administration to the DOJ or FARA administration to the Clerk of the House and the Secretary of the Senate.

Historically, registration of foreign lobbyists and agents was first handled by the Department of State before it was transferred to the Department of Justice.¹⁵⁵ The Clerk of the House and the Secretary of the Senate have historically handled LDA administration.¹⁵⁶ Congress could choose to maintain FARA administration with the DOJ and LDA administration with Congress, could add LDA registration to the DOJ portfolio, or could transfer FARA administration to the Clerk of the House and the Secretary of the Senate. Such a change, however, would likely require additional resources to hire personnel and to realign current LDA or FARA registration and disclosure.

Alternatively, Congress could create a new entity to administer both the LDA and FARA. Creating a new agency could allow a singular focus on lobbying and potentially provide for a holistic view of lobbying registration and disclosure across both domestic and foreign clients and issues, regardless of whether contact is made with the executive or legislative branch. Combining lobbying administration into a new agency, however, could involve significant costs to transfer LDA and FARA data and to hire personnel.

Should Congress merge LDA and FARA enforcement, the DOJ would likely retain the right to investigate and potentially prosecute noncompliance. If a combined lobbying administration unit was placed either in Congress or in a new (or existing) agency, referrals of noncompliance would likely still be required for DOJ to potentially take any action.

Concluding Observations

The Foreign Agents Registration Act is more than 80 years old. Initially enacted to “combat the spread of hidden foreign influence through propaganda in American politics,”¹⁵⁷ today FARA has been reoriented to focus on foreign principals engaged in advocacy activities in the United States.

An analysis of FARA and its amendments in 1942, 1966, and 1995; scholarly work on foreign agents; and proposed legislation identified five areas where interest in further altering FARA has been expressed. These include registration and disclosure requirements, the labeling of informational materials, civil investigative demand authority, repealing exemptions under FARA, and restricting certain former officials from becoming foreign agents. Additional considerations include providing additional resources for administration and enforcement and potentially combining LDA and FARA administration.

The continued introduction of legislation suggests that some Members of Congress are actively thinking about potential FARA amendments. Whether future amendments to FARA might occur

¹⁵⁵ Executive Order 9176, “Transferring the Administration of the Act of June 8, 1938, as amended, Requiring the Registration of Agents of Foreign Principals, from the Secretary of State to the Attorney General,” 7 *Federal Register* 4127, June 2, 1942.

¹⁵⁶ 2 U.S.C. §1603(a)(1).

¹⁵⁷ U.S. Department of Justice, Office of Public Affairs, “Department of Justice Posts Advisory Opinions on FARA.Gov Website,” press release, June 8, 2019. Specifically, FARA responded to foreign influence concerns by creating a system “to identify agents of foreign principals who might engage in subversive acts or in spreading foreign propaganda and to require them to make public record of the nature of their employment.” *Vierick v. United States*, 318 U.S. 236, 241 (1943). See also, U.S. Congress, House Committee on the Judiciary, *Lobbying Disclosure Act of 1995*, report to accompany H.R. 2564, 104th Cong., 1st sess., November 14, 1995, H.Rept. 104-339, part 1 (Washington: GPO, 1995), pp. 5-8.

is unknown. Should Congress decide to make changes to FARA, it may likely be the result of responding to the current foreign lobbying environment.

Caplin & Drysdale

Appendix. Foreign Agent Registration Act (FARA) Definitions

Table A-1 provides a summary of the definitions provided for in FARA.

Table A-1. Foreign Agent Registration Act (FARA) Definitions
22 U.S.C. §611

Term	Definition
Person	Individuals, partnerships, associations, organizations or any other combination of individuals [§611(a)]
Foreign Principal	Government of a foreign country; foreign political party; person outside the United States; ^a and “a partnership association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country” [§611(b)]
Agent of a Foreign Principal	(1) “Any person who acts as an agent, representatives, employee, or servant,” or “at the order, request or under direct control” of a foreign principal or a person “directly or indirectly supervised, directed, controlled, financed, or subsidized ... by a foreign principal,” and engages in certain covered activities; ^b (2) “any person who agrees, consents, assumes or purports to act as ... an agent of a foreign principal” ^c [§611(c)]
Government of a Foreign Country	“any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country,” or part of another country. Does not include the United States [§611(e)]
Foreign Political Party	“Any organization or other combination of individuals ... having for an aim or purpose ... the establishment, administration, control, or acquisition of administration or control of a government of a foreign country.” Does not include the United States [§611(f)]
Public-Relations Counsel	“any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations” [611(g)]
Publicity Agent	“any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise” [611(h)]
Information-Service Employee	“any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country [611(i)]
Registration Statement	Registration statement required to be filed with the Attorney General under 22 U.S.C. 612(a) [611(k)]
American Republic	Any of the states which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940 ^d [611(l)]
United States	Includes the States, the District of Columbia, the territories, the Canal Zone, the insular possessions, and other places subject to the civil or military jurisdiction of the United States [611(m)]

Term	Definition
Prints	“Newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds ... and impressions or reproductions....” [611(n)]
Political Activities	Any activities that the engaging party believes will or intends to influence government or the American public in regards to American domestic or foreign policy [611(o)]
Political Consultant	“Person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party” [611(p)]

Source: CRS analysis and summary of 22 U.S.C. §611.

Notes:

- a. A person is not an agent of a foreign principal if they are a citizen of and live in the United States, or are a business incorporated in the United States and have their principal place of business within the United States [611(b)(2)].
- b. With respect to covered activities, FARA defines an agent of a foreign principal as one who “(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” [§611(c)(1)].
- c. Pursuant to 22 U.S.C. §611(d), “The term ‘agent of a foreign principal’ does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter.”
- d. For more information on the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940, see “Provisional Administration of European Colonies and Possessions in the Americas (Convention),” July 30, 1940, 56 Stat. 1273, Treaty Series 977, at <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000003-0623.pdf>.

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