



Statement of

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Before

Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
U.S. House of Representatives

Hearing on

# **“Enhancing the Foreign Agents Registration Act of 1938”**

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Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee, on behalf of the Congressional Research Service thank you for this opportunity to discuss current legislative proposals to amend the Foreign Agents Registration Act (FARA).

My testimony focuses on two areas: (1) background on the Foreign Agents Registration Act, including past amendments to FARA; and (2) a discussion of recent legislative proposals to amend FARA. The discussion of recent legislation focuses on several policy proposals included in multiple introduced measures. These include proposals to provide civil investigative demand authority to the Department of Justice (DOJ); increase penalties for noncompliance; repeal or modify certain statutory exemptions to FARA; change how DOJ administers FARA; amend registration and disclosure requirements; enhance public access to FARA registration statements; change labeling requirements for informational materials; and require federal agencies to report to Congress on FARA administration and enforcement.

This written statement is drawn in part from other CRS products, including CRS Report R46435, *Foreign Agents Registration Act (FARA): Background and Issues for Congress*, by Jacob R. Straus. Accordingly, my statement summarizes and expands key portions of the Report, and addresses the legislative proposals introduced in recent Congresses.

## Background on the Foreign Agents Registration Act

On June 8, 1938, President Franklin D. Roosevelt signed FARA into law.<sup>1</sup> The law sought to “combat the spread of hidden foreign influence ... in American politics,”<sup>2</sup> by “shining ‘the spotlight of pitiless publicity’ on such propaganda.”<sup>3</sup> 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.”<sup>4</sup>

Today, the DOJ administers FARA through its National Security Division’s FARA Unit. 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.”<sup>5</sup> By its express terms, FARA “neither prohibits representation of foreign interests in the United States nor prevents dissemination of foreign propaganda.”<sup>6</sup> Instead, the act provides for public disclosure of such activities,<sup>7</sup> and requires that registrants label certain informational materials with a “conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal.”<sup>8</sup>

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<sup>1</sup> P.L. 75-583, 52 Stat. 631 (1938).

<sup>2</sup> U.S. Department of Justice, Office of Public Affairs, “Department of Justice Posts Advisory Opinions on FARA.Gov Website,” press release, June 8, 2018, at <https://www.justice.gov/opa/pr/departement-justice-posts-advisory-opinions-faragov-website>.

<sup>3</sup> U.S. Congress, House Committee on the Judiciary, *Foreign Propaganda*, report to accompany H.R. 1591, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., July 28, 1937, H.Rept. 75-1381 (Washington: GPO, 1937), p. 2.

<sup>4</sup> *Viereck 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, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., November 14, 1995, H.Rept. 104-339, part 1 (Washington: GPO, 1995), pp. 5-8.

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

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

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

<sup>8</sup> 22 U.S.C. §614(b). DOJ currently maintains an online, publicly accessible database of FARA filings. The database can be

## Foreign Influence Concerns: Founding to World War II

During the Revolutionary War, the Continental Congress had entered into an alliance with France to help the colonies defeat the British.<sup>9</sup> After the war, the Framers of the Constitution debated how best to guard against foreign influence on offices of the United States.<sup>10</sup> The result was the Foreign Emoluments Clause, a specific provision against a federal officer's acceptance of an emolument, office, or title granted by a foreign state without the consent of Congress.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> Although General Wilkinson was ultimately acquitted,<sup>14</sup> the ongoing interest by foreign governments to influence American public policy was perceived as a continuing threat for much of the next century.<sup>15</sup>

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accessed at [https://efile.fara.gov/ords/fara/f?p=1381:1:760783791264:::.](https://efile.fara.gov/ords/fara/f?p=1381:1:760783791264:::)

<sup>9</sup> 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 Magazine of History and Biography*, vol. 82, no. 1 (January 1958), pp. 55-64.

<sup>10</sup> Gouverneur Morris, among others, expressed this concern on July 5, 1787, during discussions about the Constitution. The *Records of the Federal Convention of 1787* reports the following about Morris's remarks: "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))).

<sup>11</sup> U.S. Constitution, Article I, section 9, clause 8. For more information on the Emoluments Clause, see "Foreign Emoluments Clause," in CRS Report R45992, *The Emoluments Clauses and the Presidency: Background and Recent Developments*, by Michael A. Foster and Kevin J. Hickey; and CRS In Focus IF11086, *The Emoluments Clauses of the U.S. Constitution*, by Kevin J. Hickey and Michael A. Foster.

<sup>12</sup> 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#page=24](https://www.senate.gov/artandhistory/history/resources/pdf/Washingtons_Farewell_Address.pdf#page=24).

<sup>13</sup> "General Wilkinson," House debate, *Annals of the Congress of the United States*, vol. 18 (January 18, 1808), pp. 1461-1462. President James Madison gave General Wilkinson back his commission 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.

<sup>14</sup> 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.

<sup>15</sup> "Non-Intervention," *Congressional Globe* vol. 21 (January 19, 1852), p. 298. 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.'"

The idea of regulating foreign influence dates to at least the early 1900s, when the first pieces of legislation aimed at directly addressing the real or perceived possibility of foreign influence in American politics were introduced. These measures generally would have 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.<sup>16</sup> Laws that address foreign influence have generally favored transparency in order to “preserve in this country the freedom of speech and freedom of the press.”<sup>17</sup>

## Foreign Agents Registration Act of 1938

With the rise of Nazism in 1930s Germany, concern about foreign propaganda and influence grew in the United States.<sup>18</sup> To address the growing threat of propaganda, in 1934 the House of Representatives created the Special Committee on Un-American Activities.<sup>19</sup> 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.<sup>20</sup>

After a thorough investigation, in 1935, the special committee made several recommendations. These included enacting legislation to require representatives of foreign governments, political parties, or companies to register with the government; restricting the length of stay in the United States of foreigners engaged in propaganda activities; and prohibiting individuals from advocating for “the overthrow or destruction by force and violence of the Government of the United States.”<sup>21</sup>

In the 75<sup>th</sup> Congress (1937-1938), Representative John McCormack, former chair of the special committee, introduced the bill (H.R. 1591) that would become FARA.<sup>22</sup> As summarized by the House Judiciary Committee, the bill, 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.”<sup>23</sup>

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<sup>16</sup> For example, in 1917 (65<sup>th</sup> Congress), three measures were introduced in the House. These measures would have required the filing of certain information by groups and individuals seeking to influence legislation or public opinion (H.R. 5287); prohibited the making of untrue statements under oath to influence the passage or defeat of measures that dealt with a foreign nation (H.R. 2585); and restricted aliens from acting as foreign agents without notification to and consent from the U.S. government (H.R. 2583). The House did not consider any of these measures.

<sup>17</sup> 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, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., June 16, 1937, unpublished (Washington: GPO, 1937), p. 28.

<sup>18</sup> U.S. Congress, Special Committee on Un-American Activities, *Investigation of Nazi and Other Propaganda*, 74<sup>th</sup> Cong., 1<sup>st</sup> sess., February 15, H.Rept. 153 (Washington: GPO, 1935), p. 2.

<sup>19</sup> H.Res. 198 (73<sup>rd</sup> Congress), agreed to March 20, 1934.

<sup>20</sup> H.Res. 198 (73<sup>rd</sup> Congress).

<sup>21</sup> U.S. Congress, Special Committee on Un-American Activities, *Investigation of Nazi and Other Propaganda*, 74<sup>th</sup> Cong., 1<sup>st</sup> sess., February 15, H.Rept. 153 (Washington: GPO, 1935), p. 25. See also 54 Stat. 670 and 18 U.S.C. §2385.

<sup>22</sup> “Public Bills and Resolutions,” *Congressional Record*, vol. 81, part 1 (January 5, 1937), p. 34.

<sup>23</sup> U.S. Congress, House Committee on the Judiciary, *Foreign Propaganda*, report to accompany H.R. 1591, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., July 30, 1937, H.Rept. 1381 (Washington: GPO, 1937), p. 2.

During a hearing on foreign influence legislation before a House Judiciary Committee subcommittee, 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 country was indirectly in the employ of the German Government. Now I say indirectly. How was it? 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.<sup>24</sup>

On June 8, 1938, President Roosevelt signed FARA into law.<sup>25</sup>

As enacted,<sup>26</sup> FARA required certain persons acting on behalf of a foreign principal<sup>27</sup> to register with the government (originally the Secretary of State).<sup>28</sup> Registration under the act was triggered when the person became an “agent of a foreign principal” by acting as “a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney” to a foreign principal.<sup>29</sup> Registration was required to be made “under oath” and include information about the registrant’s contact information, contracts “of employment under which such person acts or agrees to act as an agent,” compensation under the contract, and foreign principals represented.<sup>30</sup> Recertification was required every six months.<sup>31</sup> The Secretary of State was required to keep records permanently and authorized to prescribe regulations for “public examination and inspection” of those records.<sup>32</sup> The law also carried penalties for willful noncompliance and materially false statements or omissions that included the potential for fines and prison time.<sup>33</sup>

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<sup>24</sup> 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, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., June 16, 1937, unpublished (Washington: GPO, 1937), p. 4.

<sup>25</sup> “Message from the President,” *Congressional Record*, vol. 83, part 8 (June 9, 1938), p. 8636. 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.

<sup>26</sup> P.L. 75-583, 52 Stat. 631 (1938).

<sup>27</sup> P.L. 75-583, §1(c). FARA originally defined “foreign principal” as “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.”

<sup>28</sup> P.L. 75-583, §2.

<sup>29</sup> P.L. 75-583, §1(d). FARA originally defined “agent of a foreign principal,” in full, to mean “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.”

<sup>30</sup> P.L. 75-583, §2. FARA originally required individuals who were then acting as an agent of a foreign principal to register within 30 days, and individuals who become an agent of a foreign principal after enactment to register “forthwith.”

<sup>31</sup> P.L. 75-583, §3.

<sup>32</sup> P.L. 75-583, §4.

<sup>33</sup> P.L. 75-583, §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 the definition of “foreign principal” and “agent of a foreign principal,” clarify the exemption for accredited or consular officers of a foreign government, and adjust the public availability of records from former foreign agents.<sup>34</sup>

Since the 1939 amendments, Congress has substantially revised FARA on three additional occasions in response to the changing nature of representation of foreign entities in the United States. These changes occurred in 1942, 1966, and 1995.

Broadly, the 1942 Amendments were an effort to capture the information thought necessary to understand foreign propaganda efforts.<sup>35</sup> As enacted, the 1942 amendments<sup>36</sup>

- expanded the definitions of persons who are considered to be foreign principals and foreign agents;
- transferred administration of the law from the Department of State to the DOJ;<sup>37</sup>
- expanded information required in initial registration statements and supplemental disclosures;<sup>38</sup>
- created exemptions for accredited diplomats or consular officers; non-public relations counsels, publicity agents, or information-service employees; 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;<sup>39</sup>
- defined “political propaganda”<sup>40</sup> and required propaganda materials to be labeled appropriately<sup>41</sup> and submitted to the Attorney General and the Library of Congress;<sup>42</sup>
- required preservation of records and allowance for public inspection;<sup>43</sup> and

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<sup>34</sup> P.L. 76-319, 53 Stat. 1244 (1939). The 1939 amendments redefined “foreign principal” to include domestic entities funded by foreign principals and expand the definition of “agent of a foreign principal” to include individuals compensated by or under the direction of a foreign principal. U.S. Congress, House Committee on the Judiciary, *Amending the Act Requiring Registration of Agents of Foreign Principals*, report to accompany H.R. 5988, 76<sup>th</sup> Cong., 1<sup>st</sup> sess., May 31, 1939, H.Rept. 711 (Washington: GPO, 1939), pp. 1-2; and U.S. Congress, Senate, Committee on the Judiciary, *Amending the Act Requiring Registration of Agents of Foreign Principals*, report to accompany H.R. 5988, 76<sup>th</sup> Cong., 1<sup>st</sup> sess., July 25, 1939, S.Rept. 902 (Washington: GPO, 1939), pp. 1-2.

<sup>35</sup> 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.

<sup>36</sup> P.L. 77-532, 56 Stat. 248 (1942). 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. For more information on the 1942 amendments, see CRS Report R46435, *Foreign Agents Registration Act (FARA): Background and Issues for Congress*, by Jacob R. Straus.

<sup>37</sup> P.L. 77-532, §2.

<sup>38</sup> P.L. 77-532, §1(2).

<sup>39</sup> P.L. 77-532, §1(3).

<sup>40</sup> P.L. 77-532, §1(1)(j).

<sup>41</sup> P.L. 77-532, §1(4)(b).

<sup>42</sup> P.L. 77-532, §1(4)(a).

<sup>43</sup> P.L. 77-532, §1(5)-(6).

- established penalties for noncompliance.<sup>44</sup>

Following the 1942 amendments, FARA implementation and enforcement focused on propaganda and the dissemination of information potentially harmful to America's democracy.<sup>45</sup> After World War II, as fears about Nazi propaganda started to wane, the statute reportedly went largely unenforced by the DOJ,<sup>46</sup> with approximately nine FARA cases prosecuted by the department through the early 1960s.<sup>47</sup>

In at least partial response to the role of foreign representatives during the 1962 consideration of the Sugar Act Amendments,<sup>48</sup> Congress began to take an active interest in potentially updating FARA to address lobbying by representatives of foreign governments, with the Senate Foreign Relations Committee authorizing a staff investigation.<sup>49</sup> The result were amendments that shifted the law's focus from propaganda to advocacy activities.<sup>50</sup> As enacted, the 1966 FARA amendments

- expanded several definitions, including the terms "foreign principal" and "agent of a foreign principal," and added definitions for "political activities" and "political consultant";<sup>51</sup>
- 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;<sup>52</sup>
- specified a registration timeline and the content of registration and disclosure statements, including details of campaign contributions;<sup>53</sup>
- changed the requirements for labeling and filing of political propaganda;<sup>54</sup> and
- vested enforcement authority in the Attorney General and specified maximum fines and jail time for noncompliance.<sup>55</sup>

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<sup>44</sup> P.L. 77-532, §1(8).

<sup>45</sup> 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), pp. 579-590.

<sup>46</sup> 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.

<sup>47</sup> O'Hara (1965), p. 441; and "Attorneys under the Foreign Agents Registration Act of 1938," *Harvard Law Review* vol. 78, no. 3 (January 1965), pp. 619-634.

<sup>48</sup> U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, *The Federal Lobbying Disclosure Laws*, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., June 20, July 16, and September 25, 1991, S.Hrg. 102-377 (Washington: GPO, 1991), p. 487; and 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>.

<sup>49</sup> In 1962, 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." 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." U.S. Congress, Senate Committee on Foreign Relations, *Nondiplomatic Activities of Representatives of Foreign Governments*, committee print, 87<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 1962 (Washington: GPO, 1962), p. v.

<sup>50</sup> P.L. 89-486, 80 Stat. 244 (1966). For a detailed history of the 1966 amendment, see CRS Report R46435, *Foreign Agents Registration Act (FARA): Background and Issues for Congress*, by Jacob R. Straus.

<sup>51</sup> P.L. 89-486, §1(1)-(5).

<sup>52</sup> P.L. 89-486, §1(5), §2(7), and §3.

<sup>53</sup> P.L. 89-486, §2

<sup>54</sup> P.L. 89-486, §4.

<sup>55</sup> P.L. 89-486, §7.

In December 1995, Congress created the Lobbying Disclosure Act (LDA) as a replacement for the Regulation of Lobbying Act of 1946.<sup>56</sup> Although the LDA focused on domestic lobbying, it also contained four FARA amendments. As summarized in a House Judiciary Committee report, the LDA amendments to FARA 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.”<sup>57</sup>

In 2007, the Honest Leadership and Open Government Act (HLOGA) further amended FARA.<sup>58</sup> The HLOGA amendments required the Attorney General to develop an electronic filing system and to make the accompanying database available to the public.<sup>59</sup>

In December 2021, the DOJ issued an advance notice of proposed rulemaking to seek public comments on potential clarification, modernization, and amendment to existing FARA regulations.<sup>60</sup> DOJ’s FARA regulations were last amended in 2007.<sup>61</sup>

## Legislative Proposals and Considerations for Congress

In recent years, general interest in FARA arguably has increased.<sup>62</sup> Reflecting that attention, various Members of Congress have introduced multiple measures to amend parts of FARA.<sup>63</sup> A review of these bills reveals several trends. Broadly, these bills propose to:

- provide civil investigative demand authority to DOJ;
- change the penalties that could be imposed for non-compliance;

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<sup>56</sup> P.L. 104-65, 109 Stat. 691 (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.

<sup>57</sup> U.S. Congress, House, Committee on the Judiciary, *Lobbying Disclosure Act of 1995*, report to accompany H.R. 2564, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 104-339, Part 1, November 14, 1995 (Washington: GPO, 1995), p. 21.

<sup>58</sup> P.L. 110-81, §212, 121 Stat. 749 (2007).

<sup>59</sup> P.L. 110-81, §212.

<sup>60</sup> Department of Justice, “Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations,” 86 *Federal Register* 70787, December 13, 2021, at <https://www.federalregister.gov/documents/2021/12/13/2021-26936/clarification-and-modernization-of-foreign-agents-registration-act-fara-implementing-regulations>.

<sup>61</sup> 28 C.F.R. §§5.1–5.1101.

<sup>62</sup> For example, see Justin Wise, “ABA Adopts Resolution Pushing for FARA Overhaul,” *LAW360*, February 14, 2022, at <https://www.law360.com/articles/1464158/aba-adopts-resolution-pushing-for-fara-overhaul>.

<sup>63</sup> CRS conducted a search of Congress.gov from the 111<sup>th</sup> Congress (2009-2010), the first Congress after the enactment of FARA reforms in HLOGA, to the 117<sup>th</sup> Congress (2021-2022, through March 22, 2022) to identify legislation that proposed to amend FARA. Overall, the search returned approximately 170 measures that contained the term “foreign agents registration act.”



- repeal or modify exemptions to FARA;
- modify the administration of FARA by DOJ;
- amend FARA registration and disclosure requirements and public access to documents;
- alter the requirements for labeling of informational materials;
- restrict certain former officials from acting as foreign agents (referred to below as “revolving door” provisions); and
- require DOJ, the DOJ Inspector General (IG), and/or the Government Accountability Office (GAO) to report on FARA’s implementation, administration, and enforcement.

## Civil Investigative Demand (CID) Authority

The Department of Justice reports that since 2007, it has successfully prosecuted 14 FARA cases.<sup>64</sup> Several bills would provide the DOJ with civil investigative demand (CID) authority, to aid the agency in the potential prosecution of FARA cases.<sup>65</sup> CID authority is “a type of subpoena that allows the Department of Justice to obtain documents, require responses to interrogatories, and take depositions.”<sup>66</sup> Drawn from a similar provision in the False Claims Act,<sup>67</sup> 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.”<sup>68</sup>

During a 2018 House Judiciary Committee markup of legislation to amend FARA, proponents of providing DOJ CID authority argued, “CID authority ... will make the job easier, it will enhance enforcement of FARA, and it will pursue the underlying objectives of the legislation that has been a part of our law since 1938.”<sup>69</sup> Opponents argued that CID could “raise Fourth Amendment and other constitutional concerns.”<sup>70</sup>

## Penalties

Several bills would change available penalties for FARA non-compliance. Under current law, criminal and civil penalties are potentially available.<sup>71</sup> Several bills propose to enhance available fines for failure

<sup>64</sup> U.S. Department of Justice, “Recent FARA Cases,” at <https://www.justice.gov/nsd-fara/recent-cases>.

<sup>65</sup> For example, see H.R. 2811, H.R. 4170, H.R. 6249, S. 625, and S. 2039 (115<sup>th</sup> Congress); S. 1762 (116<sup>th</sup> Congress); and H.R. 4847 and S. 1724 (117<sup>th</sup> Congress).

<sup>66</sup> 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> [hereinafter, *Markup of H.R. 4170*]. For more information, see CRS Legal Sidebar LSB10060, *House Judiciary to Mark Up H.R. 4170, the Disclosing Foreign Influence Act*; and *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 2194 (2020).

<sup>67</sup> 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 Abridged Look at the False Claims Act and Related Federal Statutes*, by Charles Doyle.

<sup>68</sup> Rep. Bob Goodlatte, in *Markup of H.R. 4170*, p. 7.

<sup>69</sup> Rep. Mike Johnson, in *Markup of H.R. 4170*, p. 45.

<sup>70</sup> Rep. Jerrold Nadler, in *Markup of H.R. 4170*, p. 8. The Fourth Amendment protects people against unreasonable searches and seizures by the government. For more information, see CRS *Constitution Annotated*, “Fourth Amendment,” at <https://constitution.congress.gov/browse/amendment-4/>; and 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>.

<sup>71</sup> 22 U.S.C. §618 and 18 U.S.C. §3571. U.S. Department of Justice, “FARA Enforcement,” at <https://www.justice.gov/nsd-fara/fara-enforcement>.

to file timely or complete registration or supplemental disclosure statements,<sup>72</sup> or failure to remedy a defective filing.<sup>73</sup> Additionally, several proposals would prohibit foreign principals from paying the fines of a person convicted under FARA and would allow the DOJ to use fines to offset enforcement costs.<sup>74</sup>

Historically, Congress has debated the need for increased penalties and fines. For example, in 1977, during debate on a proposed FARA amendment that was not adopted, Senator George McGovern noted that the law included “severe criminal penalties and injunctions—which experience has shown to be time-consuming and on occasion inadequate to the circumstances of today’s world.”<sup>75</sup> Subsequently, a GAO report found that the FARA Unit could be strengthened by “permitting the Unit to assess administrative fines for minor violations, an enforcement tool stronger than letters and quicker than injunctive actions, and ... increasing the existing fines to reflect changed economic conditions.”<sup>76</sup> In 2016, the DOJ IG noted that Federal Bureau of Investigation (FBI) personnel “believe that FARA carries a penalty sufficient enough to serve as a deterrent to both the agent and his foreign principal or to induce the target of an investigation ....”<sup>77</sup> Other observers have disagreed and argued for additional penalties. One 1990 study noted that FARA’s criminal penalties seem to be “rarely use[d] ... because of the difficulty in proving intent” and that “administrators have increasingly relied upon civil remedies.”<sup>78</sup>

## Exemptions

Certain individuals, who might otherwise be considered agents of a foreign principal, are exempt from registering under FARA. FARA includes eight exemptions. They are for (a) diplomatic or consular officers; (b) officials of a foreign government; (c) staff members of diplomatic or consular officers; (d) private and nonpolitical activities and the solicitation of funds; (e) religious, scholastic, or scientific pursuits; (f) defense of foreign government vital to United States defense; (g) legal representation of a disclosed foreign principal before a U.S. court or agency; and (h) filers under the Lobbying Disclosure Act (LDA).<sup>79</sup>

The responsibility to establish whether an exemption might be available to a potential filer “rests upon the person for whose benefit the exemption is claimed.”<sup>80</sup> Therefore, potential filers who fall within one of the exemption categories self-select their exemption and do not notify the DOJ.<sup>81</sup> DOJ has issued

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<sup>72</sup> For example, see S. 1762 (116<sup>th</sup> Congress); and H.R. 1419, H.R. 4847, and S. 2093 (117<sup>th</sup> Congress).

<sup>73</sup> For example, see S. 1762 (116<sup>th</sup> Congress), H.R. 1419 and H.R. 4847 (117<sup>th</sup> Congress).

<sup>74</sup> For example, see H.R. 1419, H.R. 4847, and S. 2093 (117<sup>th</sup> Congress).

<sup>75</sup> Sen. George McGovern, “Federal Registration of Foreign Lobbying and Propaganda Act,” remarks in the Senate, *Congressional Record*, vol. 123, part 22 (August 5, 1977), p. S27505.

<sup>76</sup> U.S. Government Accountability Office, *Improvements Needed in the Administration of Foreign Agent Registration*, ID-80-51, July 31, 1980, p. 8, <https://www.gao.gov/products/id-80-51>.

<sup>77</sup> U.S. Department of Justice, Office of the Inspector General, *Audit of the National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act*, Audit Division 16-24, September 2016, p. 11, at <https://oig.justice.gov/reports/2016/a1624.pdf#page=16> [hereinafter, *DOJ IG 2016 Audit*].

<sup>78</sup> Philip J. Perry, “Recently Proposed Reforms to the Foreign Agents Registration Act,” *Cornell International Law Journal*, vol. 23, no. 1 (Winter 1990), p. 144.

<sup>79</sup> 22 U.S.C. §613. For more information on exemptions to FARA, see “Figure 1. Exemptions to Registration Under the Foreign Agents Registration Act,” in CRS Report R46435, *Foreign Agents Registration Act (FARA): Background and Issues for Congress*, by Jacob R. Straus.

<sup>80</sup> 5 C.F.R. §5.300.

<sup>81</sup> U.S. Department of Justice, “Do I Need to Contact the FARA Unit to Qualify for an Exemption?” *Frequently Asked Questions*, at <https://www.justice.gov/nsd-fara/frequently-asked-questions#16>. Agents of a foreign principal who claim an exemption do not appear in the DOJ’s FARA database. To access filings, see U.S. Department of Justice, “Search Filings,” at <https://efile.fara.gov/ords/f?p=1235:10>.

regulations on exemptions in Title 28 of the *Code of Federal Regulations*, and has issued advisory opinions on several of the exemptions.<sup>82</sup>

Recent proposals have focused primarily on four exemptions: private and nonpolitical activities;<sup>83</sup> religious, scholastic, or scientific pursuits;<sup>84</sup> legal representation of a disclosed foreign principal;<sup>85</sup> and the LDA filer.<sup>86</sup> Those in favor of amending the exemptions often seek to limit opportunities for potential foreign agents to avoid reporting their advocacy activity.<sup>87</sup> They also generally argue that a repeal or limitation of exemptions might serve to increase the number of registrations, could promote transparency,<sup>88</sup> and provide a more accurate count of foreign agents.<sup>89</sup> In evaluating whether to amend FARA's existing exemptions, one consideration might focus on who determines whether an exemption would apply to a prospective registrant.<sup>90</sup>

## Administration

The DOJ National Security Division's FARA Unit administers the law.<sup>91</sup> The FARA Unit receives, reviews, and monitors FARA registration and disclosure statements;<sup>92</sup> performs periodic "formal

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<sup>82</sup> 28 C.F.R. §§5.301-307. The DOJ's December 2021 advance notice of proposed rulemaking solicits feedback on amending the regulations on exemptions. See <https://www.federalregister.gov/d/2021-26936/p-26>.

<sup>83</sup> 22 U.S.C. §613(d). Exemptions under this section are also sometimes referred to as the "commercial exemption."

<sup>84</sup> 22 U.S.C. §613(e).

<sup>85</sup> 22 U.S.C. §613(g).

<sup>86</sup> 22 U.S.C. §613(h).

<sup>87</sup> For example, see H.R. 2819 and H.R. 4170 (115<sup>th</sup> Congress); H.R. 5150, §605(b) (116<sup>th</sup> Congress); and H.R. 1535, H.R. 2055, H.R. 3390, H.R. 4792, H.R. 4847, S. 577, S. 687, and S. 1754 (117<sup>th</sup> Congress). Under FARA, the DOJ Inspector General (IG) found that organizations like "think tanks, non-governmental organizations, university and college campus groups, foreign media entities, and grassroots organizations that receive funding and direction from foreign governments ... generally claim that they act independently of foreign control or are not serving a foreign interest and are not required to register." See, *DOJ IG 2016 Audit*, p. iii.

<sup>88</sup> Rep. Mike Johnson, in *Markup of H.R. 4170*, p. 16.

<sup>89</sup> For example, see Project on Government Oversight, *Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short*, December 16, 2014, at <https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short/>.

<sup>90</sup> In 1977, during debate on the Federal Registration of Foreign Lobbying and Propaganda Act (S. 2045), Senator George McGovern raised the potential that FARA could be amended to "require foreign agents to clear a claimed exemption with the Department of Justice." See Sen. George McGovern, "Federal Registration of Foreign Lobbying and Propaganda Act," remarks in the Senate, *Congressional Record*, vol. 123, part 22 (August 5, 1977), p. S27505. Under current regulations (28 C.F.R. §5.2), potential registrants are encouraged to ask for an advisory opinion from the DOJ FARA Unit. The DOJ FARA Unit provides copies of recent advisory opinions at <https://www.justice.gov/nsd-fara/advisory-opinions#>.

<sup>91</sup> 22 U.S.C. §§612, 620; 28 C.F.R. §§5.1-5.1101.

<sup>92</sup> *DOJ IG 2016 Audit*, p. 3. Every six months, the Attorney General is required to report to Congress "concerning administration of [FARA] ..., including registrations filed ... and the nature, sources and content of political propaganda disseminated and distributed." The DOJ issued the most recent FARA report in December 2019. The report noted, "[d]uring the six-month period ending December 31, 2019, the Department received 74 new registration statements and terminated 33 registrations. A total of 451 active registrations, representing 716 foreign principles, were on file during the period of July 1, 2019 through December 31, 2019." For more information, see U.S. Department of Justice, Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act of 1938, as amended, for the six months ending December 31, 2019," p. 11, at <https://www.justice.gov/nsd-fara/page/file/1448896/download>.

inspections to assess the adequacy” of filings,<sup>93</sup> and issues advisory opinions.<sup>94</sup> At the time of the DOJ IG audit in 2016, the IG reported that the FARA Unit had eight employees.<sup>95</sup>

Several legislative proposals would provide DOJ with additional administrative and/or enforcement tools. For example, several bills would establish a FARA investigation and enforcement unit within DOJ that could “take appropriate legal action against individuals suspected of violating this Act,” and “coordinate any such legal activities with the United States Attorney for the relevant jurisdiction.”<sup>96</sup> Current proposals do not specify if this would be a different entity than the current DOJ FARA Unit.

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 process and review disclosure statements and informational material submissions.<sup>97</sup> From an enforcement perspective,<sup>98</sup> additional staffing or funding could provide the DOJ additional resources for the investigation and potential prosecution of non-compliant foreign agents.<sup>99</sup>

## Disclosure Requirements and Public Accessibility

Most recent FARA proposals do not propose to change the type of information currently required to be disclosed, 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.<sup>100</sup> Proponents believe that quarterly reports would align FARA reporting with LDA reporting, which is already required on a quarterly basis.<sup>101</sup> They also argue that more frequent disclosure would increase transparency and provide additional information for potential DOJ enforcement.<sup>102</sup>

In addition to changing reporting timelines, some legislative proposals would amend FARA to require that DOJ provide registration and disclosure statements in a digitized, searchable format on its FARA website.<sup>103</sup> 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

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<sup>93</sup> DOJ IG 2016 Audit, pp. 3, 16.

<sup>94</sup> DOJ IG 2016 Audit, p. 3. For a list of public advisory opinions, see U.S. Department of Justice, “Advisory Opinions,” at <https://www.justice.gov/nsd-fara/advisory-opinions>.

<sup>95</sup> The DOJ IG noted that “during our audit the FARA Unit was comprised of one Unit Chief, who is also an attorney; two staff attorneys; one Supervisory Program Manager; one Intelligence Research Specialist; one Program Specialist; and two Case Management Specialists.” DOJ IG 2016 Audit, p. 3.

<sup>96</sup> H.R. 1419 (117<sup>th</sup> Congress). For other similar provisions, see H.R. 1467 and H.R. 1612 (116<sup>th</sup> Congress).

<sup>97</sup> 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>.

<sup>98</sup> 22 U.S.C. §618. For a list of enforcement actions by the FARA Unit, see Department of Justice, “Recent FARA Cases,” at <https://www.justice.gov/nsd-fara/recent-cases>.

<sup>99</sup> U.S. General Accounting Office, *Foreign Agent Registration: Justice Needs to Improve Program Administration*, GAO/NSIAD-90-250, July 30, 1990. In 1980, GAO recommended that the DOJ “seek authority to (1) give the Justice Department additional enforcement measures, 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, Congress has not enacted legislation to address these concerns. 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>.

<sup>100</sup> For example, see S. 2039 and H.R. 4170 (115<sup>th</sup> Congress).

<sup>101</sup> 2 U.S.C. §1604(a).

<sup>102</sup> Rep. David Cicilline, *Markup of H.R. 4170*, p. 25.

<sup>103</sup> See, for example, H.R. 1566 and H.R. 1, §7104. (116<sup>th</sup> Congress). 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.

the filing.<sup>104</sup> Other information required on FARA forms is not currently searchable. This includes registrant occupation, salary, or contributions from foreign principals, among others.

## Labeling Informational Materials

FARA requires the disclosure of certain informational materials to the DOJ.<sup>105</sup> Informational materials are “items, in both physical and electronic form, that an agent disseminates in interstate commerce on behalf of a foreign principal.”<sup>106</sup> To distribute such materials in interstate or foreign commerce, the registered agent must label informational materials with a “conspicuous statement,” to identify “that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice.”<sup>107</sup>

As social media have 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.<sup>108</sup> To address this question, several bills have been introduced that would formally define email and social media posts as “informational materials” under FARA.<sup>109</sup> 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.<sup>110</sup>

## Revolving Door Provisions

Current law requires that certain 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.<sup>111</sup> In recent years, reports and studies have evaluated former federal and congressional officials’ use of the “revolving door” to become foreign agents, and some have noted anecdotal examples of individuals who may or may not be in compliance with the law.<sup>112</sup> To address the concern that former federal government officials might not be observing statutory “cooling

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<sup>104</sup> U.S. Department of Justice, “Search Filings,” at <https://efile.fara.gov/ords/f?p=1235:10>.

<sup>105</sup> 22 U.S.C. §614.

<sup>106</sup> U.S. Department of Justice, “What are Informational Materials?” *Frequently Asked Questions*, at <https://www.justice.gov/nsd-fara/frequently-asked-questions#44>.

<sup>107</sup> 22 U.S.C. §614(b). For more information on the labeling of informational materials, see “Section 614—Filing and Labeling of Political Propaganda,” in CRS Report R46435, *Foreign Agents Registration Act (FARA): Background and Issues for Congress*, by Jacob R. Straus. For additional regulations on the labeling of informational materials, see 28 C.F.R. §5.402.

<sup>108</sup> 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 (2018)), p. 49.

<sup>109</sup> For example, see H.R. 281 and S. 625 (115<sup>th</sup> Congress).

<sup>110</sup> Proposed legislation, generally 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. U.S. Department of Justice, “How Do I File Copies of Social Media?” *Frequently Asked Questions*, at <https://www.justice.gov/nsd-fara/frequently-asked-questions#50>.

<sup>111</sup> 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.

<sup>112</sup> For example, see 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>; 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; 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.

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.<sup>113</sup>

Restrictions on covered officials are often designed to discourage them from representing foreign clients within the “cooling off” period specified by the law.<sup>114</sup> Such “cooling off” periods exist for other activities including trade or treaty negotiations, certain representational communications, and attempts to influence governmental decision making in proscribed post-employment periods.<sup>115</sup>

## Reports on FARA Administration, Implementation, and Enforcement

In addition to proposing amendments to various sections of FARA, several bills would also require the Attorney General, the DOJ, the DOJ IG, or GAO to evaluate FARA administration, implementation, and enforcement and make recommendations. Some bills would require reports on specific provisions of FARA. For example, several recent measures would ask the Attorney General or the Comptroller General (GAO) to examine the use of FARA exemptions,<sup>116</sup> including by potential foreign agents for named foreign governments.<sup>117</sup>

Other reporting requirements would mandate a broader examination of FARA administration and enforcement. Broader report proposals would require

- the Attorney General (AG) to analyze the “legal, policy, and procedural challenges to the effective enforcement” and/or create a “comprehensive strategy” to improve FARA enforcement and administration;<sup>118</sup>
- the AG to submit annual reports to Congress on the use of Civil Investigative Demand Authority (CID),<sup>119</sup>
- the DOJ IG to conduct a review of FARA;<sup>120</sup> and
- the Comptroller General to review the comprehensive strategy and/or conduct an audit of the FARA LDA exemption.<sup>121</sup>

Congress commonly requests reports from executive branch agencies or GAO.<sup>122</sup> Often, these reports cover specific areas and the reporting entity makes recommendations for potential legislative, regulatory, or administrative changes.

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<sup>113</sup> Some proposals would ban certain employees from becoming foreign agents or propose that they are not entitled to certain post-employment benefits while engaged as a foreign agent (H.R. 3505 (115<sup>th</sup> Congress)). Others would increase the cooling off period from the current 1 year to 10 years or more (H.R. 4343 (112<sup>th</sup> Congress); H.R. 3389 and H.R. 6844 (117<sup>th</sup> Congress)).

<sup>114</sup> For example, see U.S. Congress, Senate Committee on the Judiciary, *Integrity in Post-Employment Act*, report to accompany S. 2334, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., August 12, 1986, S.Rept. 99-396 (Washington: GPO, 1986), pp. 7-11.

<sup>115</sup> 18 U.S.C. 207. 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.

<sup>116</sup> For example, see H.R. 1, §4431 (117<sup>th</sup> Congress), which would require the Comptroller General to “conduct and submit to Congress an assessment of the implications of the exemption provided under the Foreign Agents Registration Act.”

<sup>117</sup> See H.R. 6742, §342, and S. 3652, §341 (117<sup>th</sup> Congress), which would require the Attorney General, in consultation with the Secretary of State, to submit a report to Congress on filings under LDA and FARA of individuals who represent the Russian Federation.

<sup>118</sup> For example, see S. 1762, §5 (116<sup>th</sup> Congress), H.R. 1, §7107; H.R. 337, §4; H.R. 1724, §5; and H.R. 4847, §209(a) (117<sup>th</sup> Congress).

<sup>119</sup> For example, see H.R. 4847, §209(c) and S. 1724, §5(c) (117<sup>th</sup> Congress).

<sup>120</sup> For example, see H.R. 4847, §209(b) and S. 1724, §5(b) (117<sup>th</sup> Congress).

<sup>121</sup> For example, see H.R. 4847, §201 and S. 1724, §§6-7.

<sup>122</sup> For more information on GAO and IG reports and recommendations, see CRS In Focus IF11807, *GAO and Inspector General Recommendations to Agencies: An Introduction*, by Ben Wilhelm.

## Concluding Considerations

In recent years, congressional interest in FARA has increased and numerous measures to amend the statute have been introduced. An analysis of recent legislative proposals reveals several proposed ways to potentially amend FARA. These include proposals to provide civil investigative demand authority to the Department of Justice (DOJ); increase penalties for noncompliance; repeal or modify certain statutory exemptions to FARA; change how DOJ administers FARA; amend registration and disclosure requirements; enhance public access to FARA registration statements; change labeling requirements for informational materials; and require federal agencies to report to Congress on FARA administration and enforcement.

Policymakers may wish to consider the scope of the proposals, the benefits of particular proposals, any potential administrative adjustments that might be necessary to implement modifications to FARA, and the potential costs to changing the law.