



House Judiciary to Mark Up H.R. 4170, the Disclosing Foreign Influence Act

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The House Judiciary Committee has [announced](#) that it will hold a full committee markup hearing on Wednesday, January 17 for [H.R. 4170](#), the Disclosing Foreign Influence Act (DFIA). The bill, which has a companion measure in the Senate ([S. 2039](#)), would amend the [Foreign Agents Registration Act of 1938](#) (FARA). Congress originally enacted FARA in 1938 to promote transparency with respect to foreign propaganda, but subsequent amendments have evolved its breadth and application to focus on transparency of lobbying activities undertaken on behalf of a foreign client. However, in recent years, [internal investigations](#) by the Department of Justice (which has [the authority to enforce FARA](#)), [congressional hearings](#), and [media reports](#) have highlighted the lack of enforcement of FARA's requirements, leading to the introduction of proposals such as H.R. 4170. This posting discusses the framework of the current provisions in effect under FARA and examines the proposed changes that have been introduced under H.R. 4170/S. 2039, the Disclosing Foreign Influence Act (DFIA).

Current Statutory Requirements of the Foreign Agents Registration Act

As discussed in more detail in this [report](#), FARA generally requires that “agents of foreign principals” (1) register with the U.S. Department of Justice; (2) disclose materials that they distribute on behalf of their foreign principal; and (3) maintain records of their activities on behalf of the foreign principal. Under the statute, [an agent of a foreign principal](#) is an individual or entity that engages in political activities, public relations or other similar representation on behalf of a foreign government, foreign political party, foreign person, or foreign corporation.

Registration: The primary mechanism of FARA's regulatory scheme is its requirement that agents of foreign principals [register](#) with the U.S. government by providing certain information and updating that information at six-month intervals. Registration requires the agent to provide personal identification information; descriptions of the agent's business; information about the terms and conditions of the representation of foreign principals; and information about income received from foreign principals as well as expenditures related to the agent's activities on behalf of the foreign principal. The registration requirement serves as a trigger for the disclosure and recordkeeping requirements, and any agent who registers must also comply with the other statutory mandates.

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Disclosure: Agents of foreign principals must also [file copies](#) of any “informational materials” that the agent distributes on behalf of the foreign principal, if those materials are distributed through interstate or foreign commerce and take a form that would reasonably be expected to be distributed to two or more persons. Materials distributed by foreign agents must also include “conspicuous” and “accurate” statements to identify the source of the material as an agent of a foreign principal.

Recordkeeping: Likewise, agents of foreign principals must also [maintain records](#) of their activities and make such records available for government inspection to ensure compliance. These recordkeeping requirements continue for three years after the agent terminates the representation of a foreign principal and prohibits concealment or destruction of any records required to be kept under the statute.

Exceptions. Any person who willfully violates FARA may be subject to civil and criminal penalties upon conviction, including fines of up to \$10,000 or imprisonment for no more than five years. However, there are a number of individuals or entities that may act on behalf of a foreign principal without being subject to FARA’s requirements under several [exemptions](#) to the statutory requirements. These include:

- Certain [news organizations](#);
- Foreign government officials, diplomats, and their staff;
- Agents engaged in private and nonpolitical activities;
- Agents representing foreign countries with defense interests vital to U.S. defense;
- Practicing attorneys acting in the course of legal representation; and
- Agents who otherwise register under the Lobbying Disclosure Act (LDA).

Amendments Proposed By H.R. 4170, the Disclosing Foreign Influence Act

FARA has been in effect for eight decades, but [an audit](#) by the DOJ Inspector General in September 2016 “found that there historically have been very few FARA prosecutions.” The audit report indicated that FARA registrations “began to fall sharply in the mid-1990s.” Sponsors of the Disclosing Foreign Influence Act have cited this “sharp drop in the number of registrations and the prospect of widespread abuses” when explaining the bill’s purpose as addressing the “ambiguous requirements for those lobbying on behalf of foreign governments.”

The Disclosing Foreign Influence Act includes proposals to amend FARA in three central ways.

- **Amending the Registration Requirement for Agents Subject to Domestic Lobbying Disclosure.** Section 2(a) of H.R. 4170 would repeal the exemption from the registration requirement for agents who register under the Lobbying Disclosure Act of 1995 (LDA), a disclosure statute designed to regulate the influence of domestic lobbyists. The LDA exemption, which DOJ officials have [suggested](#) was a factor in the sharp decline in registrations in the mid-1990s, allows agents who act on behalf of foreign principals are not a foreign government or a foreign political party to register under the LDA instead of under FARA. Thus, repeal of this exemption would require all activities covered under FARA to be reported to DOJ, regardless of whether the foreign interest that was represented was in the public or private sector. Additionally, section 2(b) would also align all filing deadlines after the initial registration for FARA to coincide with the deadlines of the LDA.
- **Providing Enhanced Investigative Authority for DOJ.** Section 3 of H.R. 4170 would provide the Attorney General with what is known as civil investigative demand authority, an investigative device akin to a subpoena. Under this provision, the Attorney General

- would be authorized to compel individuals or entities to produce documents, testimony, or answers to questions under oath that are relevant to a FARA investigation *before* initiating civil or criminal enforcement proceedings. Specifically, with the proposed authority, the Attorney General would be able to compel production whenever he or she “has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to an investigation under this Act.” Such authority would augment DOJ’s authority, which **currently** is generally focused on enforcement through voluntary compliance, to investigate potential violations of agents of foreign principals who may be required to register under FARA. With the proposed civil investigative demand authority, the Attorney General could seek a court order for enforcement. The bill also includes a sunset provision, requiring the authority to expire five years after enactment.
- ***Establishing Enforcement Reporting Requirements.*** H.R. 4170 would also create new oversight requirements of FARA enforcement and administration. Section 4 would require the Attorney General to “develop and implement a comprehensive strategy to improve the enforcement and administration of [FARA]” and would require the Inspector General of DOJ to review that strategy on an ongoing basis and provide annual reports on the results of its review to Congress. Section 5 would also require the Comptroller General to analyze the effectiveness of enforcement and administration of FARA within three years of the enactment of the legislation.

For additional analysis of the legal implications of FARA, see [CRS Report R45037](#), *The Foreign Agents Registration Act (FARA): A Legal Overview* and for information on registration data and policy issues related to FARA, see [CRS In Focus IF10499](#), *Foreign Agents Registration Act: An Overview*.

Author Information

Cynthia Brown
Legislative Attorney

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