

# Senate Intelligence Committee Proposes FARA Reforms to Combat Foreign Election Interference

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As part of the U.S. Senate Select Committee on Intelligence's (Committee) bipartisan investigation into Russian interference in the 2016 election, the Committee recently proposed a number of reforms of the Foreign Agents Registration Act (FARA) in Volume 5 of its investigation report. "Loopholes still exist [in FARA], and foreign actors exploited those loopholes in 2016," the report said. For instance, "[t]he Committee's investigation revealed a number of lawyers, public relationships experts, business, political consultants, and campaign operatives working in the United States in coordination with, or at the request of, foreign principals. Many of these individuals and businesses did not register under FARA."

FARA is a disclosure statute designed to promote transparency in the U.S. political, media, and public relations arenas, among others, with respect to foreign influence. In short, FARA requires every "agent of a foreign principal" engaging in certain political or quasi-political activities in the United States to register as such with the U.S. Department of Justice (DOJ), and to periodically - and publicly - disclose certain details of that agency relationship with the foreign principal.

The Committee's recommendations, which include changes to enforcement of the existing law and suggestions for Congress and U.S. media companies, are summarized below:

## DOJ Enforcement

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## Practice Areas

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- **Increased FARA Enforcement:** While recognizing that recent FARA enforcement efforts have led to successful criminal prosecutions, the Committee calls for even greater FARA enforcement after concluding that FARA registrations were “excessively delayed, retroactive, incomplete, inaccurate, or insufficient to address the objectives of the law.”
- **Comprehensive FARA Guidance:** The Committee notes that due to lack of FARA enforcement, the public does not have enough information about the statute’s scope and application, and that the DOJ’s interpretation of FARA is “untested and undefined.” The report notes that, while the DOJ has made efforts to publish more information about its interpretations of FARA through releasing advisory opinions, the advisory opinions are “overly redacted and incomplete.” Accordingly, it proposes that, similar to its *Resource Guide to the U.S. Foreign Corrupt Practices Act*, the DOJ issue comprehensive guidance on the statute’s application.

### **Congressional Reforms**

- **Defining Covered Activities:** The report suggests that Congress clearly define the activities covered under FARA. “This may include narrowing or redefining the breadth of some provisions, such as those that may apply to purely foreign consulting, while strengthening other provisions, such as activities targeting the U.S. Government or the American people,” the report stated.
- **Removing Lobbying Disclosure Act Exception:** The Committee calls for Congress to remove the Lobbying Disclosure Act (LDA) exception to FARA registration, which permits foreign agents who are representing private foreign individuals or private foreign companies (but who are not themselves foreign governments or foreign political parties) to register under the LDA regime rather than FARA’s more comprehensive regime.
- **Modernizing Espionage Act and other Foreign Agent Laws:** The report recommends that Congress examine whether other foreign agent laws and the Espionage Act need to be updated to more effectively address modern intelligence operations. For example, 18 U.S.C. § 951 overlaps with FARA as it makes it a crime to operate as an agent of a foreign government, including with respect to non-political activity, without notifying the Attorney General. Additionally, 18 U.S.C. § 219 provides criminal penalties for U.S. officials who are or act as an agent of a foreign principal required to register under FARA.
- **Increased Transparency Through Media Notifications Requirement:** The Committee proposes that Congress impose a new requirement – either through FARA or the Federal Communications Commission (FCC) – that FARA-registered news agencies provide “clear, prominent, and regular notifications to audiences regarding the outlet’s FARA-registered status.”

### **Media Recommendations**

- In addition to calling for congressionally mandated reforms and increased DOJ enforcement, the Committee also recommends U.S. media outlets do more to identify FARA-related content. Specifically, it says that “all U.S. media outlets should clearly label or otherwise identify content that appears in connection with FARA-registered work, even if it comes in the form of an opinion column. It is ultimately

the responsibility of the editorial staff at U.S. media outlets to understand the origins of information that their journalists and outside contributors are promoting, and to inform their audiences when that information is in some way sponsored by a foreign agent.” In fact, the Committee goes even further, stating the U.S. media outlets need to do more generally to clearly label opinion content when it could be mistaken for journalistic reporting.

The report comes at a time when the DOJ is showing continuing increased interest in enforcing FARA and promoting greater awareness and understanding of its registration triggers. For example, the DOJ recently issued guidance clarifying the scope of agency under FARA.

Similarly, the Committee’s recommendations reflect an increasing appetite in Congress to reform and update FARA. Sen. Chuck Grassley (R-IA) has already introduced bipartisan legislation that includes a provision to require the U.S. Government Accountability Office (GAO) to audit FARA’s LDA exception and would require an analysis of whether the exemption leads to misuse or abuse of federal lobbying registration and disclosure requirements. On the House side, Reps. Ken Buck (R-CO) and Ro Khanna (D-CA) have introduced their own bill, which, among other things, seeks to increase FARA transparency by creating a searchable public database for FARA filings. However, both of these bills are far more modest than the recommendations proposed by the Committee.

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*Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this article.*