



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

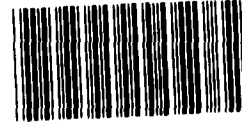
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INTERNATIONAL DIVISION

B-177551

JULY 31, 1980

To the Honorable Benjamin R. Civiletti  
The Attorney General, and  
The Honorable Edmund S. Muskie  
The Secretary of State



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Subject: [Improvements Needed in the Administration of  
Foreign Agent Registration] (ID-80-51)

We have reviewed the administration of the Foreign Agents Registration Act of 1938, as amended. The review was a followup to our 1974 report. 1/

Since 1974, the Department of Justice has made some improvements in its administration of the Act. For example, civil actions have been taken to register additional agents and to have their activities reported. However, the administration of the Act requires more attention since it is apparent that persons are acting as foreign agents without registering, registered agents are not fully disclosing their activities, and officials in the executive branch are often unaware of the Act's requirements. Thus, the Act's goal of providing the public with sufficient information on foreign agents and their activities is not being completely fulfilled.

We are therefore recommending that the Departments of Justice and State take the following steps to improve administration of the Act and to more fully achieve legislative intent.

The Attorney General should seek legislative authority to (1) give the Justice Department additional enforcement measures, such as administrative subpoena powers, and a schedule of civil fines for minor violations and increases in existing fines and (2) require written notification to the Justice Department of all exemption claims prior to any agent activity. He should also:

1/ Effectiveness of the Foreign Agents Registration Act of 1938, As Amended, And Its Administration by the Department of Justice, (B-177551, Mar. 13, 1974).

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- Survey the public users of the foreign agent files to determine their opinions on whether disclosure information is adequate and whether additional information might be useful.
- Provide specific guidance to agents and agency personnel on their responsibilities under the Act and revise the registration and reporting forms to better reflect the requirements of the Act as well as the results of the user survey.
- Establish a more permanent inspection capability with scheduled inspections for and emphasis on the more important type of agents.

The Secretary of State should resolve with the Attorney General who qualifies for diplomatic exemptions and, in the future, provide whatever assistance the Attorney General requests to effectively administer the Act.

Enclosure 1 discusses these subjects in detail and explains why we believe these actions are necessary.

We are sending copies of this report to the Chairmen of the House Committee on Government Operations, Senate Committee on Governmental Affairs, House and Senate Committees on Appropriations and Committees on the Judiciary, House Committee on Foreign Affairs, and Senate Committee on Foreign Relations.

Section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We would appreciate receiving a copy of these statements.

  
J. K. Fasick  
Director

Enclosure

(483230)

IMPROVEMENTS NEEDED IN THE ADMINISTRATION  
OF FOREIGN AGENT REGISTRATION

The Foreign Agents Registration Act of 1938 was adopted to identify agents engaged in political activities, including the spreading of foreign propoganda, on behalf of foreign principals and to publicly report their activities and finances.

In the mid 1960s, congressional attention focused on the lawyer-lobbyist and public relations counsel whose objective was not to subvert or overthrow the U.S. Government but to influence its policies to a particular client's satisfaction. The 1966 amendments to the Act were designed to reflect this shift by placing emphasis on protecting the integrity of the Government's decisionmaking process and on disclosing the activities of foreign agents, including their contacts with executive branch officials. The Act is not intended to prohibit lobbying on behalf of foreign principals but to require their agents to register with and periodically report their activities to the Justice Department's Registration Unit.

REGISTRATION OF AGENTS

A foreign agent must submit specific statements and exhibits when he initially registers with the Unit and when new principals are acquired. Supplemental statements of the agent's activities and finances are required every 6 months thereafter. Separate reports are also required if the agent disseminates political propoganda. This information is available for public review at the Justice Department and copies are available upon request.

While the Act states that any person acting as an agent must register, it also provides certain exemptions to registration, such as for diplomatic, humanitarian, commercial, and legal activities. Unit officials stated the latter two exemptions are broadly written and have fostered differing interpretations. The burden of proof for using the exemption rests with the agent, and no approval by the Unit is required. Only if the agents have been identified by the Unit is their use of the exemption questioned.

Unit officials believe that, as a result of improperly claimed exemptions, general unawareness of the Act's requirements, and evasion of the Act, there are more active agents than the approximately 650 registered. Although the officials

do not have evidence as to the number of unregistered agents, some believe the 650 figure may be only the "tip of the iceberg."

It is difficult to determine the number of unregistered agents. The Unit does not make scheduled reviews of executive agency records or periodic inquiries of agency officials about agent activities since additional staff would be needed for this purpose. Few agencies' personnel are aware of the Act and even fewer have data upon which a review could be performed. The means used by the Unit to identify unregistered agents include a review of media content to determine who might be acting for other countries, inspection of registered agents records, and tips provided from various sources.

We discussed foreign agent registration with officials of various agencies and inquired whether they had any records available concerning agent contacts. The officials were with the Departments of State and Commerce, International Trade Commission (ITC), Securities and Exchange Commission, Office of the U.S. Trade Representative, and the military services. Since the agencies are not required to take any particular action, their awareness of the Act was limited or nonexistent, and only at ITC did we find any records which could be used for verification. We reviewed the seven completed fair trade practice cases for 1978 and 1979. In four of these cases, we found that 20 persons were involved who should have been registered, according to the Unit's criteria, but only one was. These agents made up about 20 percent of the witnesses in the cases.

Agents should be required to notify Justice in writing that they are claiming an exemption from registering. If agents had to notify Justice, it would provide the Unit with better information on who isn't registered that should be. Further, the agents would lose their first line of defense in evading registration.

#### ADEQUACY OF DISCLOSURE IN REPORTING

In our 1974 report to the Senate Foreign Relations Committee 1/, we reported that only 30 percent of 222 supplemental statements we reviewed provided adequate disclosure. Since then, there has been some improvement but this continues to be a major deficiency.

1/Effectiveness of the Foreign Agents Registration Act of 1938, As Amended, And Its Administration by the Department of Justice (B-177551, Mar. 13, 1974).

ENCLOSURE I

According to Unit officials, the criteria for adequate disclosure are that the public should be able to review an agent's file and know which Government officials an agent has contacted for his principal, when the contact occurred, what was discussed, what position the agent presented, and the finances associated with these contacts. Agents are expected to provide this information semiannually in a 27-question supplemental statement of their activities and finances. Paralegal personnel in the Unit review these statements for adequate disclosure and request additional information from the agents as necessary.

We reviewed 299 supplemental statements of 163 agents to assess the adequacy of the information provided and found that only 83 agents, or 51 percent, were adequately reporting their activities. The lawyer-lobbyist group, the focal point of the 1966 amendments, had one of the lowest levels of adequate reporting, as shown below.

<u>Agent type</u>	<u>Number of agents</u>	<u>Adequately reporting</u>	
		<u>Number</u>	<u>Percent</u>
Tourist	23	19	83
Public relations	18	11	61
Trade centers	22	15	68
Lawyer-lobbyist	46	14	30
Embassy	44	21	48
Other	10	3	30
Total	<u>163</u>	<u>83</u>	<u>51</u>

We selected 19 cases, including 11 lawyer-lobbyist cases, for discussion with the paralegals. We considered these cases to be the worst violations of the adequate disclosure criteria. Among the deficiencies we identified were conflicting statements about the agent's principal; no listing of contacts, activities, and/or finances; outstanding Unit requests for additional information; no cross-examinations of agent's financial records; missing registration statements; unexplained travel and entertainment expenses; no statement of purpose or position or of relationship of the agent to other agents; reporting of useless information; and lateness in reporting activities.

In most of these cases, the paralegals were not enforcing their criteria. Their reasons for this included inexperience, overlooking an item during their review, or planning to correct the deficiencies during an inspection.

ENCLOSURE I

In our review of the agents' files, we observed differences in both the style and extensiveness of agent reporting. We noted that the questions on the forms are too general and, as such, do not specifically address the disclosure criteria. Unit officials agreed in general with our observations but added that the questions related to specific sections of the Act. Forms, general regulations concerning the Act, and advice, if requested, are provided to the agent. However, no standardized guidance on specifically how and what to report is available to the agent or to the paralegal who must review the forms.

We believe several changes can be made to improve the quality of disclosure in agent reporting, including (1) establishing standard disclosure criteria and enforcing compliance with the criteria, (2) revising the forms to request information that meets the criteria, (3) giving the agents specific guidance on the criteria and how information should be reported, (4) training the paralegals to review the statements, and (5) concentrating the review process on the lawyer-lobbyist group and other more important agents.

PUBLIC VIEW OF ADEQUATE DISCLOSURE

One of the Act's goals is to provide the public with adequate disclosure of foreign agent activities and finances. However, no determination has been made as to whether the public views the information as adequate.

We reviewed the files of 17 agents to determine who was using the files and whether their information needs were met by the files. The largest user of the files was the media, as shown below.

<u>Type of file user</u>	<u>Number of requests 1-1-78 to 4-29-80 (note a)</u>	<u>Percent</u>
Media	103	44
Lawyers, generally agents	56	24
Students	23	10
Congress	3	1
Government agencies (GAO)	3 (2)	1
Agents reviewing their own files	4	2
Other	44	19
	<u>236</u>	

a/ Write-in requests for file information not included.

## ENCLOSURE I

While it is recorded who used the file, we found no information on whether or not the files provided satisfactory disclosure information to the public reviewer. A Unit official stated that no formal survey has been made of this question but that sometimes a reviewer will ask Unit personnel followup questions after seeing the files.

We believe the Unit should know the public's evaluation of the service being provided, especially if changes are to be made in the reporting criteria and format.

### TIMELINESS OF AGENT REGISTRATION AND REPORTING

The Act requires that persons file registration forms within 10 days of becoming agents. In 1974, only 5 of the 122 forms we reviewed, or 4 percent, met this requirement. In 1980, we reviewed 79 forms, filed since the date of our 1974 report, and found that 18, or 23 percent, met the requirement. Of the remaining 61 cases, 22 were late by more than 90 days.

The situation was similar under Justice regulations which require agent reporting within 30 days of the end of the 6-month period. In 1974, 87 of the 222 forms we reviewed, or 39 percent, met the deadline. In 1980, only 120 of the 299 forms we reviewed, or 40 percent, met the deadline. The remaining 179 forms were late by an average of 15 days.

### LACK OF INSPECTIONS

The Unit's inspection program has been dormant; agents' books and records had not been inspected for over a year until just the last few weeks. As a result, the Unit lost its primary means of assuring that registered agents were reporting all their activities and finances.

In our 1974 report, we recommended that Justice conduct more inspections. At most, 15 inspections had been made in the 2 years prior to that time. Subsequently, Unit lawyers with some FBI assistance made 93 inspections in 1974. For

the most part, these were one day visits to tourist and information offices. Since then the number of inspections has steadily declined, as shown below.

<u>Year</u>	<u>Number of inspections</u>
1974	93
1975	46
1976	26
1977	34
1978	9
1979	8
1980	<u>a/1</u>

a/As of July 1, 1980.

Unit officials said the reduction in inspections after 1974 resulted from changes in who was being inspected, how they were inspected, and the Unit personnel conducting the inspection. Experience gained from inspections convinced Unit officials that the lawyer-lobbyist agents warranted more attention than the tourist and information offices. Subsequently, inspections were more detailed and lengthy and fewer were made. Unit officials believe the inspection process was improved, since the more important agents were being covered. Then the inspection program changed again in 1978.

In 1974, the inspection teams consisted of Unit lawyers and FBI agents. However, the low priority given the work by the FBI and courtroom demands on the lawyers caused the Unit to assign inspections to the paralegals in 1978. The Unit Investigator began training the paralegals, and 9 inspections, mostly of tourist operations, were made under his supervision. In mid-1978, the program was stopped when the Investigator was temporarily reassigned to another program for 6 months. The program was restarted in 1979 and 8 inspections were made before the Investigator was reassigned and the program was halted again. Since mid-1979 there were no inspections until just a few weeks ago.

Because the paralegals are not fully trained and lack experience inspecting lawyer-lobbyist agents, the Unit Chief requires the Investigator or a Unit lawyer to accompany the paralegals on any inspection of a lawyer-lobbyist. However, with all the lawyers tied up on court cases, the inspections stopped. A temporary solution of having the Deputy Chief accompany the paralegals on some inspections is now being used, with one inspection just completed.



The lack of inspections has also limited the paralegals' ability to improve reporting. Past inspections have been used to show the agent what information the Unit requires and how it should be reported as well as to answer the agents' questions on registration and reporting; thus inspections are viewed as being the best and easiest means for obtaining adequate disclosure.

We believe the Unit should have an inspection capability, using either the paralegals or other staff, for making regular inspections of the lawyer-lobbyist agents and other agents as necessary.

#### ENFORCEMENT OF THE ACT

Justice has increasingly used the Act's civil penalties to cause more foreign agents to register and report their activities. However, such actions have been limited by the availability of Unit lawyers to pursue violations.

In our 1974 report, we noted that the Act was considered a "compliance" rather than a "criminal" act, even though it provides criminal sanctions for willful violations. Further, the Unit attempted prosecution only in clear cases of recalcitrant noncompliance. As a result, the injunctive remedy authority had been used once between 1966 and 1974. Since then, the Department has increased the use of its civil penalties to enforce the Act. According to a Unit official, there were two civil actions, two grand jury actions, and four investigative matters in process. This is just below the average caseload the Unit has handled since 1974.

Although the level of enforcement activities has increased since 1974, Unit officials stated it could be much greater if staff were available. Civil proceedings are a complex and lengthy process and a lawyer often is involved with a case for a year or two. Because of the time required and the limited number of lawyers, the Unit can only prosecute a few cases. According to the Unit Chief, he could immediately double his civil caseload if lawyers were available.

Criminal prosecution has been used sparingly. According to Unit officials, successful prosecution is very difficult since willful intent to violate the Act is hard to prove. While one of the grand jury actions and one investigative matter may result in criminal prosecution, the Unit generally relies on civil remedies to enforce the Act.

Unit officials stated that some changes that could be made to improve enforcement of the Act are (1) providing the Unit with administrative subpoena power for use in cases of suspected nonregistered agents, (2) permitting the Unit to assess administrative fines for minor violations, an enforcement tool stronger than letters and quicker than injunctive actions, and (3) increasing the existing fines to reflect changed economic conditions.

We believe some improvements have been made in enforcing the Act but that more needs to be done. We support the changes that Unit officials say would improve their operations.

ROLE OF EXECUTIVE  
BRANCH AGENCIES

Since the 1966 amendments were adopted to protect the integrity of the Government's decisionmaking process, it is important that the decisionmakers be aware of the Act. Our review indicated that few executive branch officials are aware of it. Unit officials agreed with our observation and said that only at State are many people aware of the Act.

Compounding the problem is the lack of determination as to what type of lobbying is exempt from reporting. The lawyers' exemption under in the Act allows unregistered lobbying in "the course of established agency proceedings." For most agencies, no determinations have been made as to what constitute established agency proceedings for this purpose.

We believe the role of the agencies should be clarified and explained to them if the Act is to be effectively administered. The present vagueness concerning the agencies' role and the agents' reporting responsibilities allows agents to operate with a degree of immunity not intended by the Act. Agency officials should be aware of the Act and liaisons should be improved so that Justice can be apprised as necessary about agent activities.

COORDINATION OF ENFORCEMENT EFFORTS  
WITH DEPARTMENT OF STATE

In contrast to the situation during our 1974 review, coordination between State and Justice could be better.

In response to an inquiry in 1977, State advised the Senate Foreign Relations Committee of discussions between State and Justice to agree on what activities qualified for

exemption from the Act. These discussions emanated from foreign lobbying of U.S. Government officials to lift the arms embargo of an Eastern Mediterranean country. The Unit attempted to have the agents register and requested that State provide the agents' names. State did not respond to the request. Unit officials objected to this tactic and the discussions followed.

The discussions failed to produce an agreement. State officials wanted the broadest possible definition used in determining diplomatic exemptions and exemptions for short-term visits of foreign government officials, including lobbying visits. Unit officials refused to agree to these proposals and the definition of who should register remains unresolved.

Another problem concerned the untimely distribution of information on agent activities. The Unit sends State the copies of all forms filed by agents for review by officials, such as country desk officers, to keep them current on agent activities. State, in turn, sometimes gives the Unit comments on these agents. We found that the forms did not go to the desk officer upon receipt but were held by the Bureau of Intelligence and Research for distribution to the desks two or three times a year. Unit officials were unaware of this situation, which negates Justice's objective to provide timely information. Subsequent to our review, State officials notified us that the agent forms will be distributed weekly.

### CONCLUSIONS

Fourteen years after enactment, the goals of the 1966 amendments have not been fully met. Marginal improvements have been made, but much more needs to be done. Specifically, Justice needs to have (1) better tools to enforce the Act, (2) more control over exemption claims, (3) specific disclosure criteria prepared for the Unit, agents, and agency personnel as well as guidance on each one's responsibility and role, and (4) an inspection program. Additionally, problems between State and Justice over the administration of the Act need to be resolved.

### RECOMMENDATIONS

We recommend the Attorney General seek legislative authority to (1) give the Justice Department additional enforcement measures (specifically, administrative subpoena powers, a schedule of civil fines for minor violations, and

increases in existing fines) and (2) require written notification to the Justice Department of all exemption claims prior to any agent activity. He should also:

- Survey the public users of the Unit's files to determine their opinions on whether disclosure information is adequate and whether additional information might be useful.
- Provide specific guidance to agents and agency personnel on their responsibilities under the Act and revise the registration and reporting forms to better reflect the requirements of the Act as well as the results of the user survey.
- Establish a more permanent inspection capability, with scheduled inspections for and emphasis on the more important type of agents.

The Secretary of State should resolve with the Attorney General who qualifies for diplomatic exemption, and, in the future, provide whatever assistance the Attorney General requests to effectively administer the Act.