

A Tool to Protect Democracy: Modernizing the Foreign Agents Registration Act

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I. Introduction

Prior to the 2016 U.S. elections, few Americans had heard of the Foreign Agents Registration Act (“FARA”), 22 U.S.C § 611 *et seq.*, a disclosure statute originally passed in 1938 pursuant to the recommendations of a congressional committee investigating anti-American activities in the United States. The “McCormack Committee” had discovered that U.S. persons and organizations were facilitating the dissemination of foreign propaganda, particularly that instigated by European fascist and communist governments. One of the Committee’s most significant findings was that Nazi Germany had established an extensive underground propaganda apparatus using American firms and citizens. At a moment when totalitarianism and fascism were on the rise, the Committee was alarmed to discover that foreign powers were actively seeking to manipulate the American people to spread foreign ideologies and undermine American democratic values and principles.

FARA was not intended to eliminate the lobby efforts of foreign powers, but to ensure that the American people and U.S. policymakers know when political, legislative, and public relations, are being carried out in furtherance of the interests of a foreign principal.

Transparency, as opposed to regulation, was the idea, as this would avoid the need to evaluate the motivations, aims, and content of foreign lobbying campaigns. FARA was designed in

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particular to forestall the use of American citizens to influence domestic public opinion while concealing the true source of the sponsoring government. While it seemed an important safeguard in 1938 and throughout the Second World War, its utility seemed to wane thereafter, and the Department of Justice engaged in little enforcement of FARA violations in the years following the war. Matters changed dramatically in the wake of the 2016 election in light of the conclusion of US intelligence agencies that Russia had tried to influence the outcome of the election in favor of Donald Trump, particularly with the suggestion that the Russian efforts were facilitated by the involvement of U.S. persons. Concern about “unregistered foreign agents” became a household term, as more than twenty Russian nationals and several high-profile American officials were accused of violating FARA. All told, more indictments for FARA violations have been brought in the last two years than in the previous fifty years combined.

The heightened enforcement of FARA was not uncontroversial. While most experts and commentators agreed that unregistered foreign agents attempting to influence U.S. elections and public opinion shouldn't be held accountable, using FARA as the vehicle for such enforcement engendered a long overdue debate about this antiquated law.⁴ What emerged to date is that although there is much disagreement on the most effective means of holding U.S. persons responsible for undisclosed lobbying efforts on behalf of foreign government, there is general agreement that as a hedge against foreign interference, FARA is a flawed instrument.⁵

In the airing of grievances about FARA that has occurred since the 2016 elections, different stakeholders have identified different defects in the Act. Those unsure of their obligation to register under FARA have bemoaned the “FARA feeding frenzy,” given the

⁴ Citation needed.

⁵ Citation needed.

comparably unclear nature of the duties FARA imposes and the previous lack of enforcement.⁶ Good government groups, meanwhile, have been quick to point out that the new level of enforcement is relative to an extremely low bar of just seven criminal cases having been brought for FARA violations in the preceding fifty years, according to a 2016 Department of Justice Inspector General’s audit of FARA enforcement.⁷ Civil society groups, like the International Center for Non-Profit Law, have raised concerns about FARA being used as a political weapon.⁸ Those concerns were borne out by last year’s seemingly politically motivated House Natural Resources Committee investigations, which alleged several prominent environmental nonprofits may need to register under FARA.⁹ Amidst the FARA furor, several law firms have established FARA advisory programs to help clients navigate the “onerous” reporting requirements of FARA.¹⁰ Yet, good government groups have shown that many firms don’t actually fulfill FARA disclosure requirements, onerous or otherwise.¹¹ And, last but certainly not least, press freedom groups have warned about the dangers FARA-like proposals have posed to journalists abroad.¹² Congress heard these complaints, and many more, and responded with an extraordinary number of proposals to reform FARA. As we explain in much greater detail below, at least nine bills were introduced in the 115th Congress related to FARA. The bills attempt to address concerns about FARA, including: limiting lobbying (LDA), religious, scientific, fine arts exemptions; revising reporting requirements (for foreign agents and the FARA Unit); expanding the FARA

⁶ <https://www.law.com/nationallawjournal/2018/09/27/washingtons-fara-frenzy-fomenting-new-legal-business/>

⁷ <https://oig.justice.gov/reports/2016/a1624.pdf>

⁸ [http://www.icnl.org/programs/US%20Programs/Foreign%20Agents%20in%20an%20Interconnected%20World%20\(ICNL%20Working%20Paper%20-%20Feb.%202019\).pdf](http://www.icnl.org/programs/US%20Programs/Foreign%20Agents%20in%20an%20Interconnected%20World%20(ICNL%20Working%20Paper%20-%20Feb.%202019).pdf)

⁹ <http://prospect.org/article/fara-fiasco-congress-swings-manafort-hits-environmentalists>

¹⁰ <https://www.blankrome.com/services/government-relations-political-law/policy-political-law/foreign-agents-registration-act>

¹¹ <https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short/>

¹² <https://www.cjr.org/analysis/fara-press.php>

Unit's enforcement toolkit; or by banning former political appointees from lobbying on behalf of foreign interests.

This lack of legislative action has not been for lack of political will or bipartisan agreement that FARA reform is needed. Since the 2016 election the public has consistently been concerned about election security, and a number of politicians from both sides of the aisle have been outspoken about the need to reform FARA to better protect the country from undue foreign influence.¹³ “FARA has not been adequately enforced, giving a free pass to individuals who fail to register and abide by its rules,” said Senator Dianne Feinstein (D-CA) upon introduction of the *Foreign Agents Registration Amendments Act*, which she co-sponsored with a bipartisan group of Senators.¹⁴ Similarly, when Senator Chuck Grassley (R-IA) introduced the bipartisan *Disclosing Foreign Influence Act*, he noted that “my oversight work has uncovered rampant disregard by foreign agents and lackluster enforcement by federal authorities.”¹⁵

With such widespread political and public support, such extensive legislative proposals already on the table, and such an urgent need to better defend American democracy, this is an ideal moment to pursue FARA reform. While stakeholder interests might be immensely varied, there are ample areas of overlapping concerns, and there are clearly areas of FARA reform that merit prioritization. This paper, then, is an analysis of FARA with an eye toward those areas of shared concern in the hope of providing a reasonable path forward on FARA reform.

¹³ Most recently regarding public opinion about election security, see Pew: <http://www.people-press.org/2018/10/29/election-security/>

¹⁴ <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=2DC67701-9D40-4068-9D21-4E5442748FF9>

¹⁵ <https://www.grassley.senate.gov/news/news-releases/sen-grassley-rep-johnson-introduce-bill-shine-light-foreign-influences>

The remainder of this policy note is divided into four sections: Part II will examine the current structure of the registration requirement and discuss the effect of that legislations structure. Part III will walk through relevant history of the act and explain how the 2016 election reinvigorated interest in this largely dormant law. Part IV will identify current deficiencies of the Act and explain the ways in which the current statutory scheme poses obstacles to more vigorous enforcement.

II. FARA's Basic Structure and Requirements

FARA requires persons acting as agents of “foreign principals” in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as to disclose certain activities and disbursements in connection with their work for the foreign principal. The disclosures mandated by FARA are intended to facilitate evaluations by the American government of the statements and activities of such persons in light of their roles as foreign agents.

The statute requires an agent of a foreign principal to register as such with the Department of Justice. 22 U.S.C. §612(a), and to identify the registering agent, the foreign principal, the nature of work to be performed, as well as to supply a copy of the agreement between the agent and the foreign principal.¹⁶ The registration must be filed within 10 days of an agreement to become an agent of a foreign principal.¹⁷

At six month intervals after registering as a foreign agent, the agent must file a “supplemental statement” with the DOJ FARA Unit, conforming to the form prescribed by the

¹⁶ *Id.*

¹⁷ *Id.*

Attorney General, describing (among other things) the activities performed during the applicable six month period for foreign principals, and the amounts paid for that work. 22 U.S.C. §612(b). The current version of the supplemental statement form prescribed by the Attorney General expressly requires the reporting foreign agent to describe “*in full detail*” the agent’s activities, services, political, and public relations efforts on behalf for foreign principals during the relevant reporting period, and “*the relations, interests and policies sought to be influenced and the means employed to achieve this purpose.*”¹⁸

A foreign agent is also required to file with the DOJ FARA Unit any “informational materials” distributed in print or in a form that is “reasonably adopted” to being circulated to two or more persons, within 48 hours of transmittal.¹⁹ These informational materials must contain a conspicuous statement that the materials were distributed by an agent on behalf of a foreign principal, and that further information is on file with DOJ.²⁰ The term “informational material” is not defined in FARA or the associated regulations.

As indicated above, FARA’s requirements apply only to “agents” of a “foreign principal,” and the definitions of those terms – and the statutory exemptions limiting their scope and the associated disclosure requirements – are key drivers of FARA’s actual reach and effectiveness (or ineffectiveness). FARA’s baseline definition of the term foreign principal is quite broad, encompassing foreign governments; foreign political parties; persons located outside the United States who are not citizens of the United States; and corporations, associations,

¹⁸ See <https://www.justice.gov/file/991286/download> .

¹⁹ 22 U.S.C. § 614(a).

²⁰ 22 U.S.C. § 614(b).

partnerships, and combinations organized under the laws of and with a principal place of business in a foreign country.²¹

The term “agent of a foreign principal” is defined broadly as well. Generally, it includes any person who acts within the United States as an agent, employee, or servant of a foreign principal, or at the request, direction, or control of a foreign principal – directly or indirectly – in certain political or quasi political capacities.²² The political and quasi political roles covered by FARA include “political activities” for a foreign principal;” public relations, publicity, information, and political consulting services for a foreign principal; the solicitation or disbursement of things of value for a foreign principal; and representing a foreign principal before an agency or official of the United States. News or press associations organized under the laws of the U.S. are expressly excluded, as are media organizations that are 80% owned by U.S. citizens and that meet certain other conditions.²³

Several categories of agents are expressly exempt from FARA’s registration and disclosure requirements, despite falling within the four corners of the foreign agent definition. These exemptions may be understood as reflecting past policy judgments that the burdens and stigma associated with FARA’s registration and disclosure requirements should not be imposed on certain categories of actors. These exemptions significantly impact FARA’s reach, and include the following:

- Diplomats and officials of foreign governments, and their staffs, if properly recognized by the U.S. State Department.

²¹ 22 U.S.C. § 611(b).

²² 22 U.S.C. § 611(c).

²³ 22 U.S.C. § 611(d).

- Persons whose activities are of a purely commercial nature or solely of a religious, scholastic, academic, scientific or fine arts nature.
- Certain soliciting or collecting of funds to be used for medical aid, or for food and clothing to relieve human suffering.
- Lawyers engaged in legal representation of foreign principals in the courts or similar type proceedings, as long as the attorney does not try to influence policy at the behest of their client.
- Any agent who is engaged in lobbying activities and is registered under the Lobbying Disclosure Act if the representation is on behalf of a foreign commercial interest rather than a foreign government or foreign political party.²⁴

The FARA Registration Unit of the Counterintelligence and Export Control Section (CES) within the Department's National Security Division (NSD) is responsible for the administration and enforcement of FARA. A willful failure to register as an agent of a foreign principal may result in criminal prosecution and a sentence of a fine and up to 5 years in prison. FARA also includes a civil enforcement provision that permits the Department to seek to enjoin a party from acting as an agent of a foreign principal in violation

III. The History and Congressional Intent Behind FARA

As detailed above, the original Congressional intent behind FARA was that increased transparency would enable U.S. citizens to evaluate the propaganda they were reading and hearing for themselves, and thereby be less influenced by it. As noted by a legal scholar, the House Report described the bill as forcing propaganda agents "out in the open" with the hope

²⁴ See 22 U.S.C. §613

that the “spotlight of pitiless publicity” would deter “the spread of pernicious propaganda.” In short, FARA’s initial purpose was to reveal the source of propaganda and the identities of agents in the U.S. working on behalf of foreign interests. The Act was amended in 1942, transferring the registration functions from the Secretary of State to the Attorney General. The 1942 amendments also made clear that the purpose of the law was to protect national security.

By the 1960s, foreign governments were increasingly hiring U.S. lobbyists to lobby for their interests and FARA was amended in 1966 to address this threat. The amendments were based on the Senate Committee on Foreign Relations' recommendations. The 1966 amendments broadened the Act’s reach, but also created exemptions for attorneys and other groups. Scholars have since detailed the history of unethical lobbying by former government officials and public relations efforts by U.S. agents whose conduct fell under FARA’s umbrella. The Act was unaltered for several decades, although the Attorney General began issuing regulations in 1967.

This changed in 1995 when President Clinton signed into law the Lobbying Disclosure Act (LDA)—a law designed to streamline lobbying regulation. To encourage registration, lobbyists were allowed to file under the LDA rather than under FARA, and foreign companies were exempted from FARA. Importantly, this amendment shifted FARA away from a focus on propaganda to lobbying practices instead.

Recently, FARA has garnered public attention in light of the prosecution of President Trump’s former campaign manager, Paul Manafort, for his representation of Ukrainian interests. The Department of Justice has also directed Russia’s state television station, RT America, to register under FARA in light of Russian interference in the 2016 presidential election. Legislators have even called for Al Jazeera to register, despite the fact that they are an independent news agency that supposedly does not engage in lobbying activities. In 2017,

survivors and family members of victims of 9/11 filed a DOJ complaint, urging the DOJ to investigate whether U.S. agents of Saudi Arabia failed to comply with FARA and disclose lobbying efforts related to the Justice Against Sponsors of Terrorism Act (JASTA).

The 2016 election cycle drew FARA from the shadows and made it a key subject of the national dialogue. This new attention around the law stems from Robert Mueller's highly mediatized special counsel investigation on collusion with Russia. Several major players in American and Russian politics, as well as in the media have been prosecuted as a result of the counsel's findings. These investigations have, for example, uncovered the federal crimes committed by Paul Manafort and Richard Gates, American lobbyists promoting Ukrainian interests in the United States without registering under FARA. Besides their lobbying activities, Manafort and Gates played central roles in the Trump campaign. Today, both men have faced convictions and have pleaded guilty to the charges made against them.²⁵

Manafort, Trump's former campaign manager, and Gates, his business partner, reportedly earned over \$75 million as consultants for a pro-Russian party in Ukraine.²⁶ They also connected their client with major lobbying firms in Washington: the Podesta Group and Mercury LLC.²⁷ In light of this story, the Podesta Group dissolved, though no one at the firm has been indicted for serving as an unregistered foreign agent. All of these parties claimed to be unaware that disclosure of their efforts was required, despite the Ukrainian group qualifying as a foreign client under FARA's terms. When Manafort did retroactively submit FARA filings, many of his

²⁵ <https://www.lawfareblog.com/paul-manafort-guilty-plea-highlights-increased-enforcement-foreign-agents-registration-act>

²⁶ <https://www.vox.com/the-big-idea/2017/11/3/16596484/fara-foreign-agents-registration-manafort-enforcement-scandal>

²⁷ <https://www.pogo.org/analysis/2017/10/manafort-indictment-demonstrates-how-fara-falls-short/>

statements were deemed as “false and misleading” in his indictment.²⁸ Another political actor involved in this story is Sam Patten. The pro-Russian Ukrainian group, after working principally with Manafort and Gates, largely shifted its business to a lobbying group founded by Patten and Konstantin V. Kilimnik, a Russian national.²⁹ Again, a failure to register activities under FARA led to Patten’s later guilty plea.

While the special counsel’s findings on Manafort and Gates were the most heavily covered by the media, others in Trump’s circle have also run into FARA legal trouble. Michael Flynn, Trump’s former National Security Adviser, lobbied on behalf of Inovo BV, a private firm in the Netherlands owned by Turkish citizen Kamil Alptekin. Like Manafort and Gates, Flynn did not register as a foreign agent despite receiving \$530,000 from Inovo BV to, in part, advance Turkish interests in the United States³⁰. His now defunct firm, Flynn Intel Group, instead registered under the Lobbying Disclosure Act (LDA), a law aimed at domestic lobbying. Although he was never charged for this, it was reported by the special counsel that in his retroactive FARA filings, “Flynn made materially false statements and omissions.”³¹

FARA has also been invoked for indictments of significant actors in Russian politics who failed to register their political activities carried out during the 2016 election. One of these actors was the Internet Research Agency, a Russian organization tasked with interfering in elections and political processes. The agency utilized a variety of strategies to exert its influence, including: the creation of false social media accounts, staging political rallies, and significant

²⁸ <https://www.theatlantic.com/politics/archive/2017/10/how-did-these-guys-get-hired/544358/>

²⁹ <https://www.nytimes.com/2018/08/31/us/politics/patten-fara-manafort.html>

³⁰ <https://thehill.com/business-a-lobbying/business-a-lobbying/323087-flynn-discloses-lobbying-that-may-have-helped-turkey>

³¹ <https://www.justice.gov/file/1015126/download>

expenses aimed at damaging the Clinton campaign.³² The other actors accused of operating as unregistered foreign agents were 12 Russian intelligence officers working for the Main Intelligence Directorate of the General Staff (GRU). They, most notably, hacked the email accounts of the Democratic Congressional Campaign Committee (DCCC), the Democratic National Committee (DNC), and Clinton’s campaign team.³³ Their stolen emails were later released with the intention of swaying American votes towards Donald Trump.

The convictions tied to individuals involved in manipulating the 2016 election gave new life to FARA, but significant media outlets also became targets after violating its terms. For instance, the Department of Justice directed Russia’s state-owned television station, RT America, to register under FARA due to its distribution of what is effectively Russian propaganda in the U.S. This decision’s ripple effect caused legislators to question the obligation of other media outlets, like Al Jazeera, also have an obligation to register under FARA. A letter addressed to former Attorney General Jeff Sessions, from several Members of Congress, stated that the Qatar owned network “often directly undermines American interests.”³⁴

Robert Mueller’s special counsel has completely changed the foreign influence landscape, as organizations lobbying on behalf of foreign powers pay newfound heed to regulations on their activities. FARA is now a top priority for many legislators, a hot-topic in the media, a buzz word in the legal world, and a key subject in the national conversation.

While the increase in FARA enforcement actions since the 2016 election is well known, this rate of enforcement of the Act still pales in comparison to the period after FARA was passed

³² <https://www.justice.gov/file/1035477/download>

³³ <https://www.lawfareblog.com/document-special-counsel-indicts-12-russian-intelligence-officers-hacking-dnc-and-clinton-campaign>

³⁴ <https://www.politico.com/story/2018/03/05/al-jazeera-press-foreign-agent-437072>

in 1938. According to the DOJ, FARA “was used in the World War II era to successfully prosecute some 23 criminal cases.”³⁵

But, the amendments to FARA in 1966 dramatically changed enforcement of the Act. These amendments increased the government’s burden of proof for FARA violations, added a civil injunctive remedy, and began the “Rule 2” advisory opinion system, wherein the Registration Unit issues statements about its enforcement intentions in response to queries from potential registrants. These three things “drastically reduced the incidence of criminal FARA prosecutions and increased civil and administrative resolution of FARA questions,” according to the DOJ.³⁶

The reduction in FARA enforcement was extraordinary. According to the DOJ Inspector General’s FARA audit, “Between 1966 and 2015 the Department only brought seven criminal FARA cases – one resulted in a conviction at trial for conspiracy to violate FARA and other statutes, two pleaded guilty to violating FARA, two others pleaded guilty to non-FARA charges, and the remaining two cases were dismissed.”³⁷

Even among foreign agents that do register under FARA, there is ample evidence that many firms fail to meet the statutes disclosure requirements. A Project On Government Oversight (POGO) analysis of FARA informational materials (formerly “propaganda”) found that nearly half were filed late and 12% were filed more than 100 business days late.³⁸ The POGO analysis also found that more than half of FARA registrants reported not properly

³⁵ <https://www.justice.gov/jm/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement>

³⁶ <https://www.justice.gov/jm/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement>

³⁷ <https://oig.justice.gov/reports/2016/a1624.pdf>

³⁸ <https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short/>

labeling their informational materials with the conspicuous statement that FARA requires.³⁹ The DOJ Inspector General’s audit of FARA also found that most registrants fail to meet the statutes disclosure requirements, specifically they found that “62 percent of initial registrations were untimely, and that 50 percent of registrants filed at least one supplemental statement late.”⁴⁰

Today, even after the myriad indictments for FARA violations since 2016, DOJ and the FARA Registration Unit face intrinsic limitations in their ability to enforce the Act. These limitations stem from both FARA’s design and execution. While the act includes civil injunctive relief that could halt the work of someone DOJ believed was operating as an unregistered foreign agent, this provision of FARA hasn’t been used since 1991.⁴¹ FARA violations aren’t subject to civil fines, only criminal prosecution, which carries with it a punishment of up to a \$10,000 fine or up to five years in prison. And, the burden of proof for criminal prosecutions is high, “because prosecutors under FARA must demonstrate both willfulness on the part of the accused to avoid registration or to make a false statement or omission in their filings, and that the agent was directed and controlled by a foreign principal,” according to the DOJ Inspector General’s audit of FARA.⁴²

This high bar to the only real punishment for FARA violations is made even less attainable by the paucity of resources devoted to FARA enforcement. The FARA Unit—which holds primary responsibility for enforcement of the act, including reviewing the work of more than a thousand registered foreign agents and identifying those acting as unregistered foreign agents—had just eight people on staff during the DOJ Inspector General’s audit of FARA in

³⁹ <https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short/>

⁴⁰ <https://oig.justice.gov/reports/2016/a1624.pdf>

⁴¹ <https://oig.justice.gov/reports/2016/a1624.pdf>

⁴² <https://oig.justice.gov/reports/2016/a1624.pdf>

2016.⁴³ It is perhaps unsurprising then that “The cornerstone of the Registration Unit’s enforcement efforts is encouraging voluntary compliance,” according to DOJ.⁴⁴

The rash of recent indictments for FARA violations have almost all come from the Special Counsel’s office, not the FARA Unit at DOJ, and recent enforcement actions by the FARA Unit, while a step forward, have not truly changed the incentive structure for firms to comply with FARA. A good example of this is the \$4.6 million civil settlement between the Department of Justice and Skadden, Arps in early 2019, that one FARA advisory firm described as a “landmark” settlement agreement.⁴⁵ While the settlement amount was certainly headline-worthy, it was simply the amount of money the firm earned for work it conducted that should have required FARA registration. DOJ’s agreement with Skadden also required the firm to retroactively register it’s work under FARA, but required the firm to pay no additional fines and levied no punishments on individuals at the firm.⁴⁶ The message this sends is that even unregistered foreign agents that mislead the DOJ for years face little punishment beyond losing the fees for their services—a nominal deterrent at best.

In March DOJ announced a former member of Mueller’s team will head up a new FARA enforcement division, and DOJ will shift, “from treating FARA as an administrative obligation and regulatory obligation to one that is increasingly an enforcement priority,” according to the head of DOJ’s National Security Division.⁴⁷ While an important step, this does not change the law itself, and its myriad shortcomings, so Congressional action will still be needed regardless of

⁴³ <https://oig.justice.gov/reports/2016/a1624.pdf>

⁴⁴ <https://www.justice.gov/jm/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement>

⁴⁵ <http://fara.us/2019/02/recent-fara-development-skadden-pays-4-6-million-in-settlement/>

⁴⁶ <https://www.justice.gov/opa/press-release/file/1124381/download>

⁴⁷ <https://thehill.com/policy/national-security/432979-doj-taps-former-mueller-prosecutor-to-run-foreign-lobbying-unit>

the steps this new division takes. If the 2016 election offered a case study in what *has* been wrong with FARA, the post 2016 election period showed what *could* go wrong with FARA. In the last two years FARA has been weaponized to political ends and the term “foreign agent” has become something of a scarlet letter.

In the next section we will turn to the many concerns that have been raised about FARA, including this issue of weaponization, which we argue stems from the vague and overly general language of the statute.

IV. What’s Wrong with FARA?

The incredibly vague language in the Act is a feature, not a bug, in the FARA machine. Many mistakenly believe that FARA only applies to work done on behalf of a foreign government or political party. The statute, however, makes clear that the definition of “foreign principal” extends well beyond these limited categories, and can include foreign businesses, organizations, or “other combination of persons,” or even just “a person outside of the United States.”⁴⁸

FARA’s definition of “the agent of a foreign principal” is also extraordinarily broad, and includes anyone who acts at the order, request, or under the direction or control of a foreign principal.⁴⁹ In other words, an individual can be considered a foreign agent even if there isn’t a formal contract with a foreign principal, so long as they’re doing work at one’s “request.” That work must include “political activities,” which, despite common misconceptions, cover far more

⁴⁸ <https://www.govinfo.gov/content/pkg/USCODE-2009-title22/pdf/USCODE-2009-title22-chap11-subchapII.pdf>

⁴⁹ <https://www.govinfo.gov/content/pkg/USCODE-2009-title22/pdf/USCODE-2009-title22-chap11-subchapII.pdf>

than just lobbying, and also include any activities that are intended to influence “any section of the public within the United States.”⁵⁰

Many top FARA attorneys have argued that the law leaves far too much room for uncertainty. “The problem with FARA is that it’s a woefully vague statute,” according to Covington and Burling’s Robert Kelner.⁵¹ Other attorneys, like Tom Spulak with King & Spadling, are concerned with the persistent misunderstandings “about the interpretations of differing requirements for registration under the Lobbying Disclosure Act as compared to registration under FARA.”⁵²

These issues, compounded with the increase in FARA enforcement, are creating a new demand for FARA-versed attorneys. Kelner even joked “Everybody and his brother is starting a FARA practice, or claiming to already have one.”⁵³ Joshua Rosenstein of Sandler Reiff summed the issue up explaining “The two new changes we have seen are a large number of new clients all of a sudden asking for advice, and realizing they may need to get lawyers who understand this law.”⁵⁴ Civil society groups share these concerns about FARA’s vague and broad language, and have been the targets of the weaponization of FARA. The International Center for Non-Profit Law (ICNL), has repeatedly raised concerns about FARA being used as a political weapon.⁵⁵ Those concerns were borne out by last year’s seemingly politically motivated House

⁵⁰ <https://www.govinfo.gov/content/pkg/USCODE-2009-title22/pdf/USCODE-2009-title22-chap11-subchap11.pdf>

⁵¹ <https://www.law.com/nationallawjournal/2018/09/27/washingtons-fara-frenzy-fomenting-new-legal-business/?slreturn=20190208091853>

⁵² <https://www.law.com/nationallawjournal/2018/09/27/washingtons-fara-frenzy-fomenting-new-legal-business/?slreturn=20190208091853>

⁵³ <https://www.law.com/nationallawjournal/2018/09/27/washingtons-fara-frenzy-fomenting-new-legal-business/?slreturn=20190208091853>

⁵⁴ <https://www.rollingstone.com/politics/politics-features/fara-law-explained-794340/>

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[http://www.icnl.org/programs/US%20Programs/Foreign%20Agents%20in%20an%20Interconnected%20World%20\(ICNL%20Working%20Paper%20-%20Feb.%202019\).pdf](http://www.icnl.org/programs/US%20Programs/Foreign%20Agents%20in%20an%20Interconnected%20World%20(ICNL%20Working%20Paper%20-%20Feb.%202019).pdf)

Natural Resources Committee investigations, which alleged several prominent environmental nonprofits may need to register under FARA.⁵⁶ Press organizations have similarly bemoaned the possibility of FARA being used as a weapon to target journalists critical of the U.S. or foreign governments.⁵⁷ Their concerns too were borne out when Russia's state-owned TV network, RT, was forced to register under FARA and stripped of its Capitol Hill press credentials.⁵⁸ The Russian government then retaliated with a FARA-like statute of its own to label nine U.S. media outlets as foreign agents.⁵⁹

In short, FARA's incredibly broad and vague language sows confusion amongst potential registrants and legal professionals. Even more importantly, this confusion provides the opportunity for the law to be weaponized towards political ends that have little to do with the intent of the law.

⁵⁶ <http://prospect.org/article/fara-fiasco-congress-swings-manafort-hits-environmentalists>

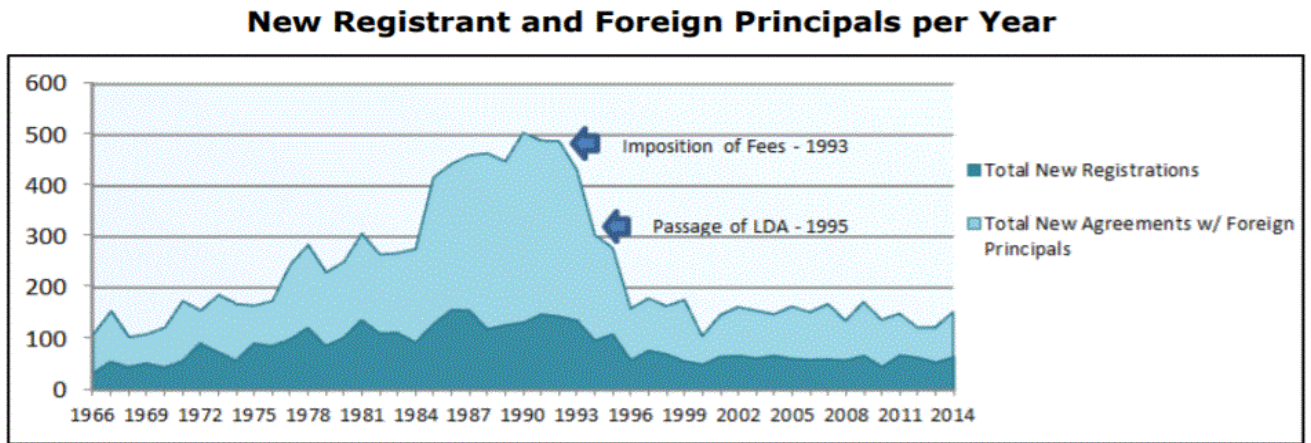
⁵⁷ <https://www.cjr.org/analysis/fara-press.php>

⁵⁸ <https://thehill.com/homenews/media/362540-rt-fires-back-after-capitol-hill-press-credentials-pulled>

⁵⁹ <https://www.brookings.edu/blog/order-from-chaos/2017/12/06/the-kremlins-latest-crackdown-on-independent-media/>

APPENDIX A: New Registrant and Foreign Principals per Year Graph

from OIG Audit



Source: www.fara.gov

APPENDIX B: Selected Proposals to Amend FARA in the 115th Congress

The bills below attempt to remedy FARA by either limiting lobbying (LDA), religious, scientific, fine arts exemptions, revising reporting requirements (for foreign agents and the FARA Unit), expanding the FARA Unit's enforcement toolkit, or by banning former political appointees from lobbying on behalf of foreign interests.

Senate/House Bill	Senate/House sponsors	Date/Actions Taken	Details/Bill Amendments to FARA
<p>S.2039 <i>Disclosing Foreign Influence Act</i></p> <hr/> <p>HR. 4170</p>	<p>Sponsored by Senator Grassley (R-Iowa). No co-sponsors.</p> <hr/> <p>Sponsored by Rep Johnson (R-La). Co sponsored by: Rep Goodlatte (R-VA), Rep Gaetz (R-FL), Rep Biggs (R-AZ), Rep Buck (R-CO), Rep Babin (R-TX), Rep Bishop (D-GA), Rep Richmond (D-LA).</p>	<p>Introduced and Referred to Senate Committee on Foreign Relations on 10/31/2017.</p> <hr/> <p>Introduced 10/31/2017, referred to House Judiciary Subcommittee on Constitution and Civil Justice on 11/17/2017, markup on 1/17/2018.</p>	<ol style="list-style-type: none"> 1. To repeal Lobbying Disclosure Act of 1995 (LDA) exemption for foreign principals in the private sector 2. To file subsequent statements at same time and frequency as those filed under the LDA/ align all filing deadlines after the initial registration for FARA to coincide with the deadlines of the LDA 3. To authorize DoJ to issue civil investigative demands before initiating criminal/civil proceedings. 4. To require DoJ attorney general to develop and implement a comprehensive strategy to improve FARA enforcement and administration subject to review by the Inspector General of DoJ and Congress, and must review potential abuse of DoJ's authority to issue civil investigative demands 5. To require Government Accountability Office to analyze the effectiveness of FARA enforcement and administration.
<p>S.625 <i>Foreign Agents Registration Modernization and Enforcement Act</i></p>	<p>Sponsored by Sen. Shaheen (D-N.H.). Co-sponsored by Sens. Klobuchar (D-MN), Van Hollen (D-MD), Young (R-Ind), and Duckworth (D-IL).</p> <hr/> <p>Sponsored by Rep. Cicilline (D-RI). Co-</p>	<p>Introduced and referred to Committee on Foreign Relations on 03/14/2017</p> <hr/> <p>Introduced 06/07/2017, referred to Subcommittee on</p>	<ol style="list-style-type: none"> 1. To provide that the DoJ, before initiating a civil or criminal proceeding, may serve a written demand upon the entity to produce material for an examination. 2. The FARA Registration Unit shall submit a semiannual report to Congress regarding the administration of FARA, including the number of investigations, involving officers and directors of any entity serving as an agent of a foreign principal, initiated based upon a perceived violation and the

<p>_____</p> <p>HR. 2811.</p>	<p>sponsored by Rep Gaetz (R-FL), Rep Shea-Porter (D-NH), Rep McGovern (D-MA).</p>	<p>Crime, Terrorism, Homeland Security, and Investigations as well as House Judiciary Subcommittee on Constitution and Civil Justice on 7/12/2017.</p>	<p>number of such investigations that were referred to DoJ for prosecution.</p> <p>3.To apply the disclosure requirement (with circumstantial exemptions) to electronic transmittals and communications (e.g., email and social media) and align the filing deadlines of the disclosure requirement with those of the registration requirement.</p>
<p>S. 2583. Foreign Influence Transparency Act</p> <p>_____</p> <p><i>Related bill</i></p> <p>H.R.5336</p>	<p>Sponsored by Sen Rubio (R-FL). Co-sponsored by Sen Cotton (R-AR).</p> <p>_____</p> <p>Sponsored by Rep Wilson (R-SC). Co-sponsored by Rep Stefanik (R-NY), Rep Hartzler (R-MO), Rep Webster (R-FL), Rep Gallagher (R-WI), Rep Gohmert (R-TX).</p>	<p>Introduced and referred to Senate Foreign Relations Committee on 3/21/2018.</p> <p>_____</p> <p>Introduced and referred to Subcommittee on Constitution and Civil Justice on 3/20/2018.</p>	<p>1. To limit the exemption from the registration requirements of such Act for persons engaging in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or the fine arts to activities which do not promote the political agenda of a foreign government</p>
<p>S.2482 Foreign Agents Registration Amendment Act of 2018</p>	<p>Sponsored by Sens. Feinstein (D-Calif). Co-sponsored by: Cornyn (R-Texas), Young (R-Ind), and Shaheen (D-N.H.).</p>	<p>Introduced and referred to Committee on Foreign Relations 3/1/2018.</p>	<p>1. To amend title 28, United States Code, to require the Attorney General to establish a section within the DoJ with responsibility for the enforcement of laws against suspected operatives or agents of foreign governments</p> <p>2. To amend title 18, United States Code, to improve enforcement of the Foreign Agents Registration Act, and for other purposes.</p>
<p>H.R. 484. DRAIN the SWAMP Act: Deter Revolving-door Appointments In our Nation; Stop Washington Appointees from becoming Manipulative</p>	<p>Sponsored by Rep. DeFazio (D-OR). Co-sponsored by Rep. Slaughter (D-NY), Rep Norton (D-DC), Rep. Shea-Porter (D-NH), Rep. Lee (D-CA)</p>	<p>Introduced 1/12/2017, referred to House Committee on the Judiciary 1/12/2017, referred to Subcommittee on the Constitution and Civil Justice</p>	<p>1. To amend the LDA and FARA to restrict the lobbying activities of former political appointees by imposing a five year ban on communications by former political appointee with intent to influence officers/employees at their former executive branch agency or department</p> <p>2. To impose a lifetime ban on lobbying by a former political appointee on behalf of a foreign government or foreign political party</p>

<i>Petitioners Act</i>		2/6/2017	
<u>S. 1679</u> . <i>Foreign Agent Lobbying Transparency Enforcement Act</i>	Sponsored by Senator Duckworth (D-IL). Co-sponsored by Sen. Blumenthal (D-CT), Sen. Durbin (D-IL), Sen Hirono (D-HI).	Introduced and referred to Committee on Foreign Relations on 07/31/2017.	<ol style="list-style-type: none"> 1. To expand the applicability of FARA’s disclosure requirement by requiring agents to file copies of materials transmitted to “any other person.” 2. To require agents to provide additional information when filing any distributed materials with DoJ, including the name of each original recipient and the original date of distribution. 3. To authorize the Attorney General to enforce FARA violations by means of civil fines based on the number of offenses, as well as providing the Attorney General discretion to consider the severity and frequency of the violations.