

# RECENT PROPOSALS TO AMEND THE FOREIGN AGENTS REGISTRATION ACT: A SURVEY

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This Policy Brief surveys recent proposals to amend the Foreign Agents Registration Act to identify key trends and areas of focus.

## FARA: THE STORY SO FAR

Since the Foreign Agents Registration Act (FARA) was enacted in 1938, a lot has changed in the world around it. Originally enacted to expose and deter Nazi propaganda, it today finds itself at the vanguard of attempts to keep malign influence and covert lobbying out of U.S. democratic processes. Concerns over foreign interference in the 2016 Presidential election have only served to galvanize FARA enforcement efforts and made the statute a household name.



*Senators Grassley (R-IA) and Feinstein (D-CA) who have both introduced bipartisan measures to reform FARA. Photo taken on July 26, 2017. Source: Drew Angerer/Getty*

The Foreign Agents Registration Act (22 U.S.C. 611 et seq) aims to counter malign foreign influence by requiring: (i) the registration of foreign agents and periodic disclosures of their activities, and (ii) the labelling of information materials disseminated by agents.

When FARA was enacted as a foreign agent registration statute, its sponsor Sen. John McCormack considered it an “experiment.” Over the years, the framework has been amended several times piecemeal to assume new roles. Reforms enacted in 1942 introduced the requirement that foreign agents label propaganda they disseminate, while changes in 1966 reoriented the framework to focus on foreign lobbying. Since the latter, FARA has not seen significant reform. Its core has remained in the form it is today.

The last set of amendments to FARA that were enacted brought minor procedural tweaks in 2007. Since then, while the threats from malign influence and interference have evolved

(and perhaps, multiplied), the FARA statute has remained unchanged. Although there is consensus on the need for reforms and over 50 bills have since been introduced in the House and Senate to address its perceived flaws, none have been enacted into law.

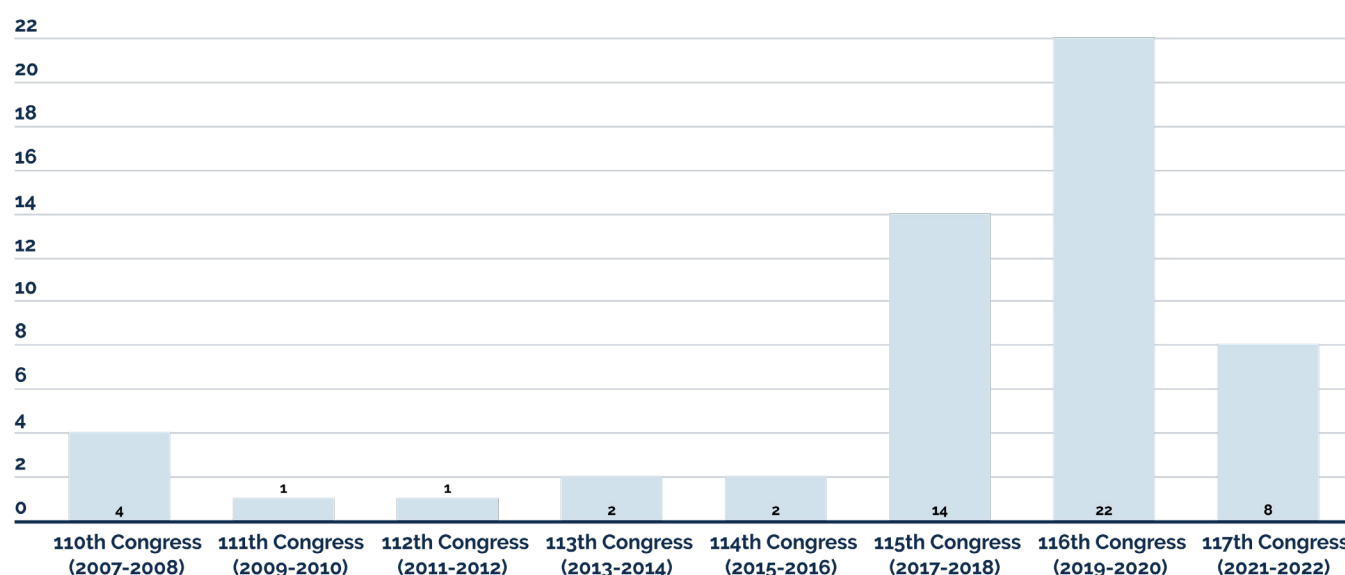
By studying these failed efforts, this brief aims to identify key trends in FARA reform proposals by focussing on their originators and contents. As the new Congress begins to shape its legislative agenda, we hope this output will stimulate more meaningful discourse around FARA reform, focus attention on neglected parts of the framework, and help identify opportunities for Congressional collaboration.

## RECENT PROPOSALS TO AMEND FARA<sup>1</sup>

Since 2007, 54 bills seeking to amend FARA have been introduced in Congress. Several of these proposals were companions (identical bills introduced in the House and Senate) or bills that were re-filed in subsequent sessions of Congress. Disregarding these, our primary dataset consisted of 32 unique proposals to amend FARA.

Reflecting the post-2016 surge of interest in FARA, the number of related bills has spiked over the past two sessions of Congress, going from a single measure in the 111th Congress (2009-2010) to more than 20 bills in the 116th Congress (2019-2020). This has coincided with increased FARA enforcement and concerns around foreign interference in the 2016 Presidential election. This trend has continued into the newly-elected Congress, as another 8 FARA-related bills have been introduced this year so far, bringing the grand total of bills since 2016 to 44.

### NUMBER OF BILLS BY SESSION OF CONGRESS



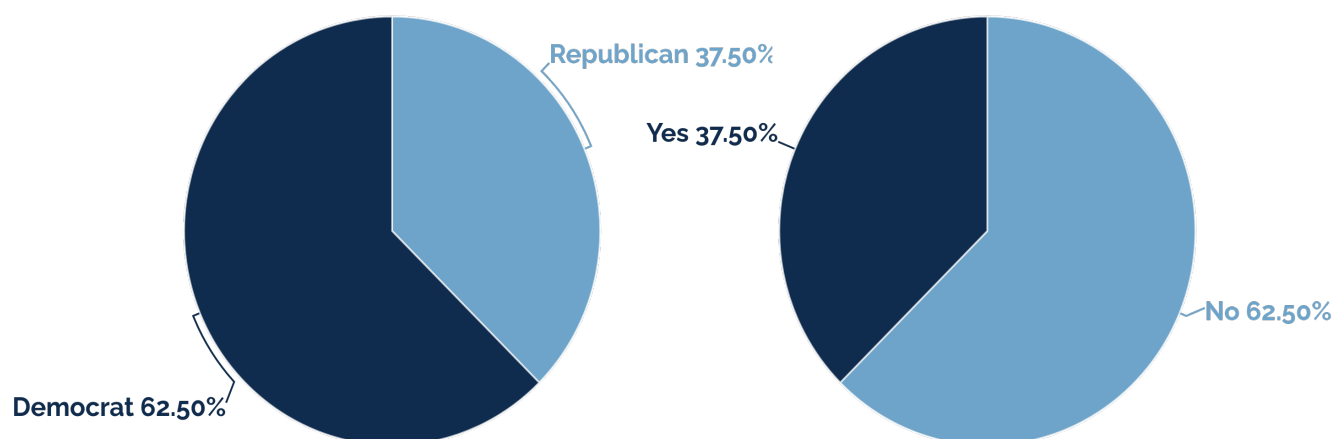
1. This memo considers bills introduced in Congress until March 31, 2021. This includes three bills for which the text was not available on Congress.gov.

## SPONSORS AND PARTISANSHIP

There is substantial bipartisan interest in FARA reforms. Democratic members have been the lead sponsors on 62.5% of FARA-related bills, while Republicans have introduced the other 37.5% of bills. 37.5% of these proposals have at least one sponsor from across the aisle, bringing together an odd set of bedfellows.

For example, Republican Senator Chuck Grassley's "Foreign Agents Disclosure and Registration Enhancement Act of 2019" was co-sponsored by Democratic Senators Chris Murphy, Dianne Feinstein, and Jeanne Shaheen, among others. Representative Abigail Spanberger, a Democrat from Virginia, garnered support from Republican representatives like John Katko and Brian Fitzpatrick for her "FADE Act of 2021."

### LEAD PARTY SPONSORS



### BIPARTISANSHIP IN FARA AMENDMENTS

## TYPES OF AMENDMENTS

Our analysis classified all unique FARA-related proposals by the type of provision contained in the measure. Many bills contain more than one type of provision, allowing us to see which areas of FARA have received the most attention overall in proposed legislation.

**AMENDMENTS TO CORE OBLIGATIONS.** A significant majority of amendments proposed pertained to reforming FARA's core obligations - registration and labelling.

- Several proposals aimed to reform the **type of activities** that were registrable or reportable under FARA. The most common proposal under this category pertained to the inclusion under FARA of 'thing(s) of value' conferred on federal or state office-holders. Other proposals required universities to disclose certain gifts under FARA or expanded the range of covered 'political activities'.

- Several proposals aimed to reform the **parties** covered under FARA. Most commonly, proposals sought to amend FARA to apply to the activities of persons located outside the United States. Interestingly, one proposal sought to exempt certain agents from FARA compliance on behalf of foreign enterprises not controlled by foreign governments, while another sought to limit FARA's application to certain press and media entities.
- 11 proposals address the list of **exemptions** to FARA, removing or restricting its carve-outs for registered lobbyists, legal representatives, and persons engaged in religious or scientific pursuits. Many of these proposals sought to repeal the LDA exemption, while others aimed to limit exemptions for specific entities, such as "Chinese Business Organizations" or those from designated "countries of national security concern."
- Several proposals also sought to reform **informational material** dissemination and **labelling** requirements. A common proposal aimed to clarify the application of labelling requirements to online disseminations, while others sought to expand the definition of information material (by eliminating the two recipient requirement) and provide clarity on application of labelling requirements.

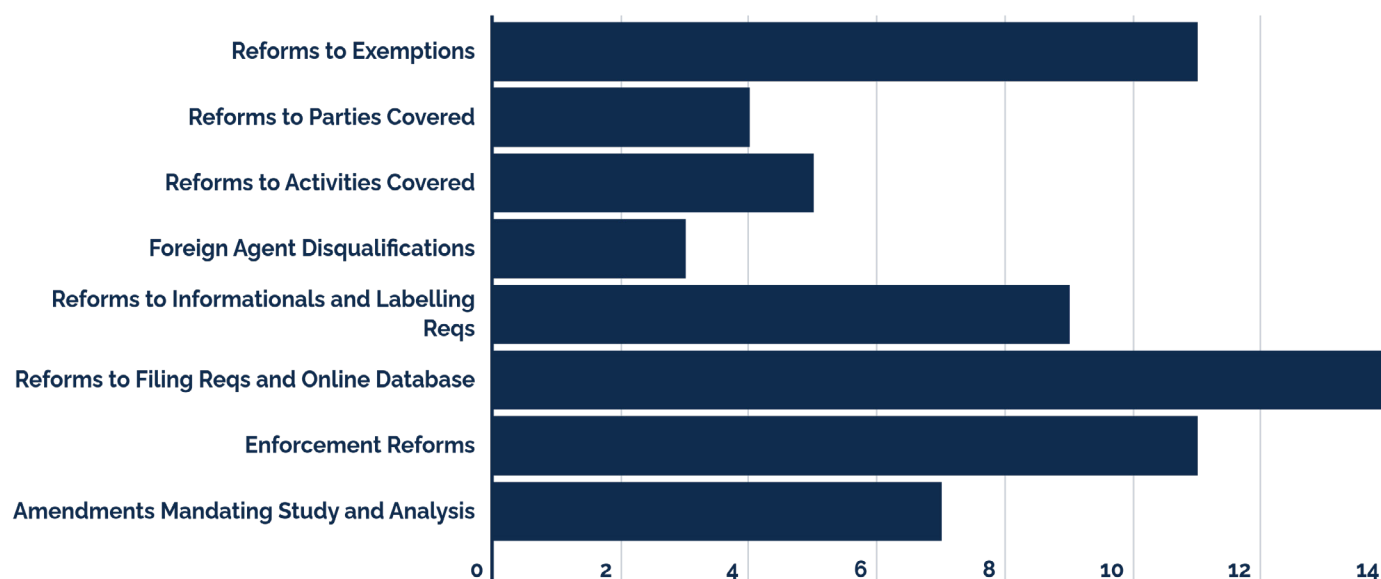
**AMENDMENTS MANDATING STUDY AND ANALYSIS.** Several proposals sought to require additional study and analysis of various aspects of the FARA framework, its functioning, and its effectiveness. While some focused on specific aspects of FARA (e.g. the LDA exemptions), most were broad ranging - requiring study by a variety of authorities including the Attorney General, DOJ Inspector General, or the Government Accountability Office.

**ENFORCEMENT REFORMS.** 11 measures contained proposals to reform FARA's enforcement mechanisms or powers. Proposals under this category were fairly straight-jacketed and pertained to the creation of a dedicated FARA enforcement unit within the DOJ or pertained to granting the DOJ additional enforcement powers e.g. relating to civil investigative demands or penalties.

**FILING AND ONLINE DATABASE REFORMS.** 14 discrete proposals contained reforms to filing requirements or to the management of the public FARA database available online. Most proposals under this head aimed to improve the searchability and readability of FARA filings and the database. Other proposals aimed to adjust the frequency of FARA filings or allowed the DOJ to collect FARA-related fees.

**FOREIGN AGENT DISQUALIFICATIONS.** A handful of proposals sought to disqualify certain categories of individuals from registering under FARA. This variously included former members of Congress, political appointees, senior military leaders, and intelligence agency heads.

## AMENDMENT PROPOSALS BY FOCUS AREA



## BIPARTISAN BUT FRAGMENTED

The above survey revealed several trends in FARA reform proposals.

### PROPOSALS FOR IDENTICAL AMENDMENTS

Many of these bills aim to address FARA's shortcomings with identical proposals for reform. Removing the exemption for registered lobbyists to register under FARA is one such example, as a string of bipartisan bills has called for this carve-out to be omitted. Multiple other measures, including House Democrats' omnibus H.R. 1, contain provisions directing a study on the implications of removing this exception. Additional illustrations of shared provisions encompass proposals to align filing deadlines with the Lobbyist Disclosure Act, rewrite the definition of informationals to include social media, and direct the Department of Justice to create a comprehensive strategy to improve FARA enforcement. In other words, even if dispersed over different bills, broad implied consensus exists on several paths for reform.

### PROPOSALS FOR SIMILAR AMENDMENTS

Other bills, while not exactly identical, use similar language when trying to address the same issue - a convergence best exemplified by the handful of measures attempting to modernize the FARA electronic database. 2019 H.R. 1566 indicates that statements should be filed in a "digitized format," 2019 H.R. 5150 calls for them to be "directly searchable" and "machine-

readable,” and 2019 H.R. 5122 states they should be “in an electronic, structured data format.” These provisions clearly seek to address a common problem and use overlapping language. For progress, the bipartisan co-sponsors of these measures need to coordinate to find consensus on the right amendments to modernize the FARA filing system.

Proposals for civil money penalties are another example of this pattern. Multiple measures have suggested new language to authorize fines for non-compliance to FARA, yet the suggested amounts of these penalties vary widely: 2016 H.R. 6057, for example, calls for fines ranging from \$2,000 to \$5,000, while 2020 H.R. 5733 caps these penalties at \$200,000. Closer coordination and sustained attempts at consensus-building can turn these disparate proposals into more robust proposals for reform.

## **PROPOSALS ADDRESSING COMMON CONCERNS**

Still other measures, while substantively different, point to shared concerns and complementary approaches. For example, three bills - 2017 H.R. 484, 2019 H.R. 867, and 2019 H.R. 1522 - all seek to disqualify a distinct set of public officials like political appointees and intelligence community heads from registering as foreign agents. These proposals, while aimed at different targets, clearly see a common path towards limiting malign influence.

## **UNIQUE PROPOSALS**

Finally, several proposals contain wholly unique ideas, ranging from placing countries of “national security concern” under enhanced FARA scrutiny to prohibiting human rights violators from making use of FARA exemptions. Of course, not all of these proposals can be adopted, nor should they all be. However, the bipartisan interest and shared ideas indicate that Congress can make real progress on updating FARA in this session.

To this end, this brief is intended to serve as a much-needed starting point for closer study of trends in FARA reform proposals. In addition to highlighting key areas of focus - and neglect - it can help guide future investigations of FARA, as well as help identify opportunities for coordination and consensus on existing proposals.