



THE USA LIBERTY ACT

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Background: Section 702 of the *Foreign Intelligence Surveillance Act* (FISA), which is set to expire on December 31, 2017, authorizes surveillance of the communications of non-U.S. persons outside of the United States in order to protect national security. It reportedly contributes to a quarter of all National Security Agency surveillance and has been used on multiple occasions to detect and prevent horrific terrorist plots against our country. Although Congress designed this authority to target non-U.S. persons located outside of the United States, it is clear that Section 702 surveillance programs can and do incidentally collect information about U.S. persons when U.S. persons communicate with the foreign targets of Section 702 surveillance. The program must be reauthorized with reforms to better safeguard Americans' civil liberties and strengthen national security.

Summary of the USA Liberty Act: The *USA Liberty Act* preserves the core purpose of Section 702: the targeting of electronic communications by non-U.S. persons to protect national security. The bill also creates a new framework of protections and transparency requirements to ensure that the government's use of Section 702 accords with principles of privacy and due process. Here are some of the bill's key components.

Revises Process for Accessing Results from 702 Queries to Better Protect Americans' Privacy

- The *USA Liberty Act* clarifies there are two purposes for any government agency to query its 702 databases – to return foreign intelligence information or evidence of a crime. The government may view *metadata*, such as phone numbers and time stamp information, with supervisory approval, so that dots can be connected regarding terrorist plots. The government may view or disseminate the *content of communications* for national security purposes (i.e. foreign intelligence information purposes like preventing terrorist attacks). However, when attempting to access content after querying for evidence of a crime, the government must first obtain a probable cause-based order from the Foreign Intelligence Surveillance Court (FISC), subject to some exceptions:
 - Communication with a known terrorist: The government may view content after querying a selector that returns metadata showing that the person associated with the selector is in communication with a known terrorist.
 - The other exceptions from the order requirement are: emergencies, consent of the U.S. person, and a previous probable cause-based court order/warrant.

Increased Penalties for Leaks

- Leaks of classified information endanger U.S. national security and the lives of our citizens. The *USA Liberty Act* enhances the penalty for the unauthorized removal and retention of classified information, raising the penalty from “up to one year” to “up to five years,” making it a felony.



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Prevents Government Abuse of Unmasking U.S. Persons

- The bill requires agencies that query 702 databases to keep records of queries, and requires the government to officially retain unmasking requests so that Congress can exercise oversight and ensure Americans' privacy is protected.
- The Office of the Director of National Intelligence must report to Congress twice each year on the number of U.S. persons whose communications are incidentally collected; the number of unmasking requests that involve U.S. persons; and the number of requests by the intelligence community that resulted in dissemination of unmasked U.S. person identities.
- The bill requires a report on the number of Department of Justice queries that resulted in a criminal selector having a "hit" in the 702 database.

Strengthens Protections for Civil Liberties

- The bill codifies for six years NSA's prohibition on the collection of so-called "about" communications, where a foreign "selector," such as an email address, is referenced in a communication. This temporary prohibition allows Congress to revisit the issue after six years. The NSA ended this practice because it could not prevent certain compliance incidents involving U.S. person information under its current technological constraints.
- The bill requires that the Director of the National Security Agency and Attorney General jointly sign an affidavit certifying that communications collected under 702 that are determined not to contain foreign intelligence information be purged.
- The bill requires the FISC to designate an amicus curiae to represent civil liberties concerns regarding the government's 702 annual certification unless the court finds that it isn't necessary. If the FISC doesn't designate an amicus curiae, it must document the reasons for its decision.

Increases Oversight and Transparency

- The bill improves the operations of the Privacy and Civil Liberties Oversight Board (PCLOB) by allowing PCLOB Members to hire staff and work even in instances when not all five members of the board have been nominated and confirmed. The PCLOB acts as a watchdog over the federal government's national security tools to ensure they don't endanger Americans' civil liberties.
- The bill extends whistleblower protections afforded to government employees to private contractors hired by the intelligence community.

Protects National Security

- The bill reauthorizes FISA Section 702 for another six years through September 30, 2023.
- The bill states that federal government agencies should share national security and foreign intelligence information among the intelligence community in order to thwart terror plots.
- The bill also states that the United States should share information collected via 702 with allies in order to combat terrorism.