

H.R. ____, Uniting and Strengthening American (USA) Liberty Act of 2017
Section-by-Section

This discussion draft of the USA Liberty Act of 2017 preserves the core purpose of Section 702: the collection of electronic communications for use in our nation's defense. Nothing in this bill undermines the ability of the Intelligence Community to gather foreign intelligence information or detect threats to the homeland. Recognizing the sheer amount of information collected under Section 702, however, 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.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE AND ACCOUNTABILITY

Sec.101. Court orders and protection of incidentally collected United States person communications.

Prohibits the government from accessing or disseminating Section 702 content to advance a criminal investigation without a probable cause order from the FISA Court.

Includes exceptions for emergencies, consent, and for cases where a probable cause-based order or warrant already exists on the target. Does not apply to searches designed to return foreign intelligence information.

Prohibits a government agent/analyst from accessing or disseminating non-content information derived from Section 702 unless the access has been approved by a supervisor and the information is shown to be relevant to an authorized investigation.

Amends minimization procedures to require the government to define the phrase "query designed for the primary purpose of returning foreign intelligence information."

Sec.102. Limitation on collection and improvements to targeting procedures and minimization procedures.

Codifies due diligence procedures used by the government to determine whether or not a target of Section 702 surveillance is believed to be a non-United States person located outside of the United States.

Ends so-called "about" collection by ensuring that the government may only target communications that are to or from the targeted person.

Reforms "unmasking" procedures. Requires officials to document unmasking requests that are auditable by Congress and to certify that unmaking requests are made only for legitimate reasons. Requires a report on unmasking by the Director of National Intelligence to the Committees on the Judiciary and the Select Committees on Intelligence.

Sec.103. Publication of minimization procedures under section 702.

The DNI, in consultation with the AG, shall conduct a declassification review of a minimization procedures, and to the extent practicable, make such review publicly available in redacted form.

Sec.104. Appointment of amicus curiae for annual certifications.

Appoints an amicus curiae to the FISA Court by default. The amicus will review minimization and targeting procedures. The Court may decline to appoint an amicus, but must document its reasons for doing so.

Sec.105. Increased accountability on incidentally collected communications.

Requires the DNI to report on known incidentally collected US-person communications and other information of US persons acquired under Section 702 including: the number of US-persons positively identified by NSA, and the number of US-persons whose information is unmasked, the number of requests made by the federal government to unmask information, the number of disseminations of communications to the FBI for non-national security or foreign intelligence cases, and the number of times that communications containing evidence of a crime were disseminated from FBI National Security Branch to FBI Criminal Investigative Division.

Sec.106. Semiannual reports on certain queries by Federal Bureau of Investigation.

Requires the FBI to report semiannually on its use of the new probable cause construct in Section 101.

Sec.107. Additional reporting requirements.

Requires the AG to submit an annual report on the government's use of FISA, detailing: the total number of applications made for orders and extension of orders; the total number of orders and extensions approving surveillance granted, modified, or denied; and, the total number of persons subject to surveillance conducted under an order or emergency authorization.

Requires the AG to provide a good faith estimate of the total number of persons targeted by the installation and use of a pen register or trap and trace device under emergency authorization.

Sec.108. Sense of Congress on purpose of section 702 and respecting foreign nationals.

Expresses the sense of Congress that Section 702 surveillance respects the norms of international comity by avoiding the targeting of foreign individuals based on unfounded discrimination and by avoiding the targeting of foreign entities in order to provide commercial competitive advantages to U.S. businesses.

TITLE II—SAFEGUARDS AND OVERSIGHT OF PRIVACY AND CIVIL LIBERTIES

Sec.201. Limitation on retention of certain data.

Requires the purging of communications determined not to contain foreign intelligence information within 90 days, absent a specific, individualized waiver by Director of NSA.

Requires the Director to include the number of times a waiver is used to preserve communications determined not to contain foreign intelligence information longer than 90 days in the semiannual report to the Committees on the Judiciary and Select Committees on Intelligence.

Sec.202. Improvements to Privacy and Civil Liberties Oversight Board.

Allows members of the Privacy and Civil Liberties Oversight Board to exercise authority of the Chair of the Board to hire new staff if the Chair remains vacant for more than one year.

Requires PCLOB to issue a report to the Committees on the Judiciary and Select Committees on Intelligence on: 1) how Section 702 is used to protect the United States, 2) how technological changes affect such protections, and 3) how privacy and civil liberties are affected.

Sec.203. Privacy and civil liberties officers.

Requires the NSA, FBI, and CIA to each appoint an official for privacy and civil liberties issues.

Sec.204. Whistleblower protections for contractors of the intelligence community.

Provides whistleblower protections to IC contractors who report on waste, fraud, and abuse, or who report on the unauthorized disclosure of classified material. This includes FBI.

TITLE III—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS

Sec.301. Extension of title VII of FISA.

Reauthorizes Title VII of FISA for six years, through September 30, 2023.

Sec.302. Penalties for unauthorized removal and retention of classified documents or material.

Increases the penalty for the intentional, unauthorized removal and retention of classified documents from one to five years; creates a penalty of not more than one year and/or a fine in cases where the removal was negligent and the retention was intentional.

Sec.303. Comptroller General study on unauthorized disclosures and the classification system.

Directs the Comptroller General to conduct a study on the unauthorized disclosure of classified information and the classification system of the United States.

Sec.304. Sense of Congress on information sharing among intelligence community to protect national security.

Expresses the sense of Congress that the United States Government should ensure that the barriers to sharing vital national security information across the Intelligence Community are not re-imposed.

Sec.305. Sense of Congress on combating terrorism.

Expresses that sense of Congress that the President should share 702-acquired communications with allies of the United States to protect the United States.

Sec.306. Technical amendments.

Makes technical amendments.

Sec.307. Severability.

Provides for severability of any section of the Act if found invalid.