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THE FAA SUNSETS EXTENSION ACT OF 2012

SEPTEMBER 20, 2012.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 3276]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, which considered the original bill (S. 3276), to extend certain amendments made by the FISA Amendments Act of 2008, and for other purposes, having considered the same, reports favorably thereon, with amendment, and recommends that the bill, as amended, do pass.

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I. PURPOSE OF THE FAA SUNSETS EXTENSION ACT OF 2012

Title VII of the Foreign Intelligence Surveillance Act of 1978 ("FISA") is scheduled to sunset on December 31, 2012, unless it is reauthorized by Congress. Title VII of FISA was initially enacted

through the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 ("FISA Amendments Act" or "FAA"). The FAA Sunsets Extension Act of 2012, as amended, reauthorizes Title VII of FISA for three years, enabling continued use of these important surveillance tools, while improving and clarifying the oversight and accountability provisions in Title VII to help ensure adequate protection of the privacy rights and civil liberties of persons in the United States.

The measure reported by the Committee reauthorizes the provisions of Title VII of FISA until June 1, 2015. This is the same date on which three other surveillance provisions of FISA are set to expire, specifically Sections 206 and 215 of the USA PATRIOT Act (P.L. 107–56) (colloquially known as the "roving wiretap" and "business records" provisions) and Section 6001(a) of the Intelligence Reform and Terrorism Protection Act (P.L. 108–458) (the "lone wolf" provision). Aligning the sunsets for all of these provisions of FISA will allow Congress to consider these important surveillance authorities in a comprehensive fashion, and avoid the repeated consideration of multiple sunsets that has resulted in a number of short-term extensions during the past several years. Indeed, an overwhelming, bipartisan majority of the Senate Select Committee on Intelligence proposed the exact same approach when it approved the Intelligence Authorization Act for Fiscal Year 2012, noting in its committee report that "[t]he alignment of all the remaining sunset dates in FISA—those recently extended by Congress to June 1, 2015 and the sunset for Title VII—will provide Congress with an opportunity to examine comprehensively all expiring authorities at the same time rather than in a piecemeal fashion." [1]

The reported measure also bolsters the oversight and accountability provisions contained in Title VII of FISA by, among other things, requiring the Inspector General of the Intelligence Community to conduct a comprehensive review of the implementation of the FISA Amendments Act, with particular regard to the protection of the privacy rights of United States persons. The bill also clarifies the scope of the annual reviews submitted by the relevant agencies involved in the implementation of Title VII to ensure that Congress receives sufficient information to perform its oversight duties. In addition, in order to improve transparency, the bill requires the Inspector General of the Intelligence Community to release publicly a summary of his conclusions following the comprehensive review of the implementation of the Title VII surveillance authorities.

Senator Feinstein, Chairman of the Senate Select Committee on Intelligence, has noted that none of these provisions pose operational problems. Instead, this measure permits the intelligence community to continue its surveillance activities authorized under Title VII, while ensuring—through improved oversight and accountability measures, and a more reasonable sunset date—that the privacy rights and civil liberties of Americans are protected.

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[1] Senate Report 112–043, accompanying S. 1458, Intelligence Authorization Act for Fiscal Year 2012, at p. 15.

II. BACKGROUND

A. THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

The Foreign Intelligence Surveillance Act was enacted by Congress in 1978 in the wake of revelations that the Government had abused its power by conducting extensive surveillance on American citizens during the 1960s and 1970s under the guise of protecting national security.[2] Through the passage of FISA, Congress established a Foreign Intelligence Surveillance Court ("FISC" or "FISA court") comprised of sitting Federal judges, as well as a statutory framework within which the FISA court could determine when the Government could properly seek to gather foreign intelligence information from United States persons. The primary standard applied by the FISA court in assessing surveillance requests by the Government is whether there is probable cause to believe that the target of the surveillance is the agent of a foreign power.[3]

B. ENACTMENT OF THE FISA AMENDMENTS ACT OF 2008

Shortly after the terrorist attacks on September 11, 2001, President Bush authorized the National Security Agency (NSA) to conduct secret, warrantless surveillance within the United States of international communications into and out of the United States. President Bush stated that this surveillance was directed at "persons linked to al Qaeda or related terrorists organizations." This warrantless surveillance was conducted outside the scope of FISA, without any approval by the FISA court, and without the full knowledge or consent of Congress. The public first became aware of the existence of this warrantless surveillance program in December 2005 through a report in *The New York Times.* In January 2007, Attorney General Alberto Gonzales announced that this warrantless surveillance program, which came to be known as the Terrorist Surveillance Program (TSP), would be conducted subject to the approval of the FISA court.

In the spring of 2007, the Director of National Intelligence submitted to Congress a proposal to amend FISA to ease restrictions on the surveillance of communications of foreigners where one or both parties to the communication were located overseas. The legislative proposal allowed the Government to target for surveillance any "person reasonably believed to be outside of the United States" without the need for a FISA court order. Congress enacted this proposed legislation in August 2007 as the Protect America Act, but imposed a six-month sunset on the legislation because of concerns that the bill lacked sufficient protection for or oversight of communications involving United States persons.

In the fall of 2007, Congress began consideration of various legislative proposals to replace the Protect America Act, which ultimately expired in February 2008. The Senate Select Committee on Intelligence reported a bill in October 2007 that created a new legal framework for the collection of communications targeting non-United States persons who were reasonably believed to be located

[2] Foreign Intelligence Surveillance Act of 1978, P.L. 95–511, 50 U.S.C. § 1801 *et seq.*

[3] *See, e.g.,* 50 U.S.C. § 1805(a)(2)(A). A detailed summary of the history and legal standards of the Foreign Intelligence Surveillance Act can be found in the following CRS report: "Reauthorization of the FISA Amendments Act," Congressional Research Service, September 12, 2012, available at *http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42725&Source=search.*

overseas. Notably, that bill, S. 2248, included a provision that provided retroactive immunity from civil suit to those private sector telecommunications companies that had aided the Government in conducting warrantless wiretapping through the Terrorist Surveillance Program. In November 2007, the bill was sequentially referred to the Senate Judiciary Committee, where it was amended to remove the retroactive immunity provisions and to include additional oversight and privacy protections. The legislation that was ultimately enacted in July 2008, however, retained the retroactive immunity provisions, but only some of the oversight and privacy protection provisions that had been included in the bill reported by the Senate Judiciary Committee. The final legislation—the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 ("FISA Amendments Act")—included a sunset date of December 31, 2012. The retroactive immunity provisions were not subject to the sunset.

C. OVERVIEW OF TITLE VII OF FISA

The primary surveillance authority granted by the FISA Amendments Act is found in Section 702 of FISA. Section 702 permits the Government to conduct domestic electronic surveillance to collect foreign intelligence information from individuals who are *non-U.S. persons,* and who are reasonably believed to be located *outside* the United States. Under Section 702, the Government is not required to seek individualized court orders authorizing surveillance as to specific targets. Instead, the Attorney General and the Director of National Intelligence ("DNI") must submit to the FISA court annual certifications identifying categories of foreign intelligence targets that the Government seeks to surveil electronically.

Government acquisitions of data under Section 702 are subject to a number of express limitations imposed by Congress. Acquisitions under Section 702 may not intentionally target any person known at the time of acquisition to be located in the United States. In addition, the statute contains an express prohibition against so-called "reverse targeting," where the Government intentionally targets a person located outside the United States with the purpose of targeting a particular person reasonably believed to be located within the United States. Section 702 data collection also may not be used to intentionally target a United States person reasonably believed to be located outside the United States, nor may it be used to intentionally acquire any wholly domestic communications, *i.e.,* communications as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States. Finally, Section 702 expressly requires that all collection of data under this authority must be conducted in a manner consistent with the Fourth Amendment to the Constitution.

Section 702 also requires that the Attorney General, in consultation with the DNI, adopt targeting and minimization procedures, as well as acquisition guidelines. The statute requires that the targeting procedures be "reasonably designed" to ensure that the Government does not collect wholly domestic communications, and that only persons outside the United States are targeted for surveillance. The minimization procedures adopted by the Attorney General must protect the identities of United States persons, as well as any nonpublic information concerning those individuals that

might be acquired incidentally by the Government. Before it will approve a certification for Section 702 surveillance, the FISA court must review and approve the targeting and minimization procedures submitted by the Attorney General to ensure that they comply with both the statute and the Fourth Amendment. Although the Government is required to share with Congress any significant legal opinions by the FISA court related to Section 702, these legal documents remain classified and have not been disclosed publicly, either in redacted or summary form.

The acquisition guidelines are designed to ensure compliance with the express limitations in Section 702 discussed above, including the prohibitions on "reverse targeting" and the acquisition of wholly domestic communications. Unlike the targeting and minimization procedures, however, the acquisition guidelines are not subject to FISA court approval.

Sections 703 and 704 of FISA specifically deal with the targeting of United States persons reasonably believed to be located outside the United States, in order to collect foreign intelligence information. Under Section 703, the Government must demonstrate to the FISA court that there is probable cause that the target is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power, before it can conduct electronic surveillance or acquire stored electronic communications or data in the United States. When the surveillance targets a U.S. person and is conducted overseas, and when the target "has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes," Section 704 requires a similar showing of probable cause that the target is a foreign power, agent of a foreign power, or an officer or employee of a foreign power. Notably, prior to enactment of Section 704, such overseas acquisitions targeting U.S. persons had been governed by Section 2.5 of Executive Order 12333, and the probable cause determinations had been made by the Attorney General. With enactment of Section 704, the Government's showing of probable cause is now subject to judicial review by the FISA court.

In addition to the judicial review provided by the FISA court, Title VII of FISA contains a number of reporting and oversight provisions to help protect the privacy rights and civil liberties of U.S. persons, and to ensure compliance with the statute. Every six months, for example, the Attorney General and the DNI are required to provide Congress and the FISA court with an assessment of compliance with the targeting and minimization procedures, as well as compliance with the acquisition guidelines. The statute also requires that the head of each element of the intelligence community conducting an acquisition authorized under Section 702 conduct an annual review of the implementation of Section 702 surveillance. In addition, attorneys with the Department of Justice coordinate with the Office of the Director of National Intelligence ("ODNI") and conduct on-site reviews of the Section 702 surveillance activities of the relevant intelligence community agencies at least once every 60 days. These reviews include routine examinations of the targeting determinations made by the relevant agencies. To date, these internal assessments and reviews have not revealed any intentional attempt to circumvent or violate the legal requirements of Section 702.

Under Section 702, the Inspector General of the Department of Justice and the inspector general of each element of the intelligence community authorized to acquire foreign intelligence information under Section 702 are authorized—but not required—to review certain aspects of the implementation of Section 702. Although the Committee has had the opportunity to review the reports of the inspector general for one of the relevant agencies and only just recently received the first compliance report from another, these reports do not cover the full scope of topics set forth in the statutory authorization for agency assessments. Moreover, there has been no comprehensive review of the implementation of Section 702 by an independent inspector general that covers all of the relevant agencies in the intelligence community. Such a comprehensive review that cuts across agency boundaries could be accomplished by the newly-created Inspector General of the Intelligence Community.

D. NEED FOR REAUTHORIZATION OF TITLE VII OF FISA

On February 8, 2012, the Attorney General and the Director of National Intelligence (DNI) sent a letter to the leadership of the Senate and the House of Representatives, urging Congress to reauthorize Title VII of FISA, and noting that reauthorization of this authority is "the top legislative priority of the Intelligence Community."[4] Attorney General Holder and DNI Clapper asserted in that letter that "[i]ntelligence collection under Title VII has produced and continues to produce significant intelligence that is vital to protect the Nation against international terrorism and other threats." Along with the February 8, 2012 letter, the administration provided Congress with an unclassified background paper on Title VII that had been prepared by the Department of Justice and the Office of Director of National Intelligence.[5] According to that unclassified background paper, Section 702 collection "provides information about the plans and identities of terrorists" and enables the intelligence community to "collect information about the intentions and capabilities of weapons proliferators and other foreign adversaries who threaten the United States." The administration asserts that "[f]ailure to reauthorize Section 702 would result in a loss of significant intelligence and impede the ability of the Intelligence Community to respond quickly to new threats and intelligence opportunities."

E. CHANGES TO SUNSET AND OVERSIGHT PROVISIONS IN S. 3276, AS REPORTED

1. June 2015 sunset

During its executive business meeting on July 19, 2012, the Committee adopted and reported favorably a substitute amendment to S. 3276 that was offered by Chairman Leahy and supported by Senator Feinstein, Chairman of the Senate Select Committee on Intelligence. As amended, the measure extends the sunset of Title VII of FISA until June 1, 2015. Extending the sunset for Title VII to 2015 will enable Congress to revisit these important provisions in

[4] February 8, 2012 letter from DNI Clapper and Attorney General Holder to Speaker Boehner, Majority Leader Reid, Rep. Pelosi, and Senator McConnell. (Attached in Appendix).
[5] *Id.*

a timely manner—which is particularly important since the work of the relevant inspectors general has not yet been fully completed. Indeed, as acknowledged in the Minority Views, the Inspector General for the Department of Justice did not issue its first compliance report on Section 702 implementation until September 12, 2012, and that report was necessarily limited in scope. The alternative of a five-year extension of the Title VII authorities, without any additional oversight or accountability improvements, and without the benefit of the complete work of the inspectors general, is ill-advised and inconsistent with this Committee's constitutional responsibility to provide vigorous and effective oversight.

A June 2015 sunset date would also align with the sunset dates for the other expiring provisions of FISA, namely Sections 206 and 215 of the USA PATRIOT Act (the "roving wiretap" and "business records" provisions) and Section 6001(a) of the Intelligence Reform and Terrorism Protection Act (the "lone wolf" provision). This alignment will provide Congress with the opportunity to consider these important surveillance provisions in a comprehensive manner. The Minority Views assert that aligning these sunsets would somehow cause operational problems because the intelligence community might be concerned that these intelligence tools would "disappear in the middle of an operation," and, therefore, would forego using one of these provisions.[6] The Minority Views overlook, however, that the FISA Amendments Act already provides for transition procedures that would ensure that any orders, authorizations, or directives issued prior to the sunset date would not just "disappear," but rather would continue in effect until the date of the expiration of such order, authorization, or directive.[7] Nothing in the measure reported by the Committee would change how those transition procedures operate, and the Committee has received no information from the intelligence community indicating any such concern.

To the contrary, the Chairman of the Senate Select Committee on Intelligence has stated that none of the provisions in the substitute amendment—including the June 2015 sunset—pose any operational problems. Indeed, an overwhelming bipartisan majority of the Senate Select Committee on Intelligence proposed an identical approach to aligning the FISA sunsets when that committee reported S. 1458, the Intelligence Authorization Act for Fiscal Year 2012. After approving the bill by a 14–1 bipartisan vote, the Senate Intelligence Committee stated in its report to the full Senate that "alignment of all the remaining sunset dates in FISA—those recently extended by Congress to June 1, 2015 and the sunset for Title VII—will provide Congress with an opportunity to examine comprehensively all expiring authorities at the same time rather than in a piecemeal fashion."[8]

2. Improved oversight

The measure reported by the Committee also requires the Inspector General of the Intelligence Community to conduct a comprehensive and independent review of the implementation of the FISA Amendments Act surveillance authorities, and expands and

[6] Minority Views at 5.
[7] Section 404(b)(1) of the FISA Amendments Act of 2008 (P.L. 110–261).
[8] Senate Report 112–043, accompanying S. 1458, Intelligence Authorization Act for Fiscal Year 2012, at p. 15.

clarifies the scope of the inspector general reviews and annual reporting requirements.[9] The Inspector General of the Intelligence Community would be required to review the procedures and guidelines developed by the intelligence community to implement Section 702, particularly with respect to the protection of the privacy rights of U.S. persons. In addition, the Inspector General of the Intelligence Community would be required to evaluate the limitations, procedures, and guidelines designed to protect U.S. person privacy rights, as well as an evaluation of the circumstances under which the contents of communications may be searched in order to review the communications of particular U.S. persons.

Contrary to the argument in the Minority Views, the reported measure provides the Inspector General of the Intelligence Community with the authority to evaluate the specific procedures, guidelines, and limitations outlined in existing statute, not to develop privacy policy. Interestingly, in arguing against an independent review by the Inspector General of the Intelligence Community, the Minority Views inadvertently provides support for periodic sunsets of the Title VII provisions, noting that "[i]n fact, the process of reauthorizing the legislation has enabled the Committee to investigate this very subject." [10]

Finally, the Inspector General of the Intelligence Community would be required to make publicly available a summary of the findings and conclusions of any review conducted pursuant to this authority. Significantly, this provision does not require the Inspector General of the Intelligence Community to issue a full unclassified report, but rather it requires that a *summary* of the findings and conclusions be made publicly available "in a manner consistent with the protection of the national security of the United States." As such, the repeated assertions in the Minority Views that the bill requires public disclosure of a heavily redacted "report" are plainly inaccurate.[11]

III. History of the Bill and Committee Consideration

A. Introduction of the Bill

The FAA Sunsets Extension Act of 2012 was introduced as S. 3276 in the Senate Select Committee on Intelligence (SSCI). During a closed meeting on May 22, 2012, the SSCI considered the bill and amendments. The bill introduced in the SSCI provided for an extension of the Title VII authorities—without amendment—until June 1, 2017. That legislation was reported by the SSCI to the full Senate on June 7, 2012, with Report No. 112–174.

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[9] The assertion in the Minority Views that the reported bill "requires the Inspector Generals [sic] of the various Intelligence Community agencies to review the acquisition, use, and dissemination of Section 702 information" is incorrect. *See* Minority Views at 4. The reported bill clarifies the scope of the existing authorization and requirements for the Inspectors General for the relevant agencies, but does not *require* any review of the acquisition, use, or dissemination of Section 702 information. Pursuant to Section 3(b)(2) of the reported bill, the Inspector General of the Intelligence Community (*not* the Inspectors General for the other relevant agencies) is *authorized*—but not required—to conduct such a review.

[10] *See* Minority Views at 6.

[11] *Id.* In addition, the citation in footnote 16 of the Minority Views to Senate Report No. 112–174 is inapposite, as that report was issued by the Senate Select Committee on Intelligence, not the Senate Judiciary Committee, and contains no pertinent description of the IC IG review authorized by the measure reported by this Committee.

B. COMMITTEE CONSIDERATION

At the request of the Chairman and Ranking Member, the Committee was provided a classified briefing on Title VII of FISA by administration officials on June 26, 2012. On June 28, 2012, Chairman Leahy and Ranking Member Grassley sent a letter to Majority Leader Harry Reid jointly requesting that the FAA Sunsets Extension Act of 2012, S. 3276, be referred sequentially to the Senate Judiciary Committee for consideration. The bill was placed on the Committee's agenda for consideration on July 12, 2012. Pursuant to the request of Ranking Member Grassley, the bill was held over for consideration the following week.

On July 19, 2012, the Committee on the Judiciary considered S. 3276 during an open and public executive business meeting. Chairman Leahy offered a substitute amendment, described above, that was agreed to by the Committee. Senator Kyl and Senator Sessions later requested that they be recorded as having opposed adoption of the substitute amendment.

The Committee then proceeded to consideration of a number of amendments that had been filed in advance of the July 19 executive business meeting. With the exception of the substitute amendment offered by Chairman Leahy and the amendment offered jointly by Senators Lee and Durbin, none of the other amendments filed or offered by the Minority dealt with the substance of FISA, the FISA Amendments Act, or any other provision in Title 50. Instead, despite requests from both Chairman Leahy and Senator Feinstein that those amendments be offered at another time in order to facilitate the expeditious consideration of these important surveillance provisions, Republican Senators offered a series of amendments that Senator Feinstein described as "extraneous".

Senator Kyl offered an amendment to create a new offense in Title 18 in order to prohibit material support with the intent to reward or facilitate international terrorism. The amendment would also increase the maximum penalties for existing material support crimes. The amendment was rejected by a roll call vote.

The vote record is as follows:

Tally: 8 Yeas, 10 Nays

Yeas (8): Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Coburn (R–OK).

Nays (10): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT).

Senator Grassley offered an amendment to add the death penalty as a punishment to certain crimes involving weapons of mass destruction. Senator Feinstein offered a motion to table the amendment. The motion to table was accepted by a roll call vote.

The vote record is as follows:

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT).

Nays (8): Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Coburn (R–OK).

Senator Cornyn offered an amendment to require the President, within 30 days, to disclose to the Senate and House Committees on the Judiciary, Intelligence and Armed Services, the Department of Justice's Office of Legal Counsel memos discussing the legal basis for the targeted killing of United States citizens abroad. Senator Feinstein offered a motion to table the amendment. The motion to table was accepted by a roll call vote.

The vote record is as follows:

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT).

Nays (8): Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Coburn (R–OK).

Senator Lee offered an amendment to require the Government to obtain a warrant before querying the content of communications collected under the FISA Amendments Act with the purpose of finding a United States person's communications. The amendment was rejected by a roll call vote.

The vote record is as follows:

Tally: 3 Yeas, 15 Nays

Yeas (3): Durbin (D–IL), Coons (D–DE), Lee (R–UT).

Nays (15): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Blumenthal (D–CT), Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Coburn (R–OK).

Senator Grassley offered an amendment to require the Department of Justice Inspector General to audit all Federal criminal wiretap applications in 2009 and 2010 in order to determine whether Department of Justice officials reviewed the contents of applications filed with the Federal courts. Senator Feinstein offered a motion to table the amendment. The motion to table was accepted by a roll call vote.

The vote record is as follows:

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT).

Nays (8): Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Coburn (R–OK).

Senator Cornyn offered an amendment to require the President, within seven days, to report to congressional leaders and the heads of the Senate and House intelligence committees any targeted killing of a United States citizen abroad. Senator Feinstein offered a motion to table the amendment. The motion to table was accepted by a roll call vote.

The vote record is as follows:

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT).

Nays (8): Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Coburn (R–OK).

Following the roll call vote on the Cornyn amendment, the Committee was unable to maintain a quorum and recessed subject to the call of the chair. At 2:15 p.m. on July 19, 2012, a sufficient quorum of the Committee assembled, and the Committee resumed the executive business meeting. The Committee then voted to report S. 3276, the FAA Sunsets Extension Act, as amended, favorably to the full Senate. The Committee proceeded by roll call vote as follows:

Tally: 10 Yeas, 8 Nays

Yeas (10): Leahy (D–VT), Kohl (D–WI), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT).

Nays (8): Grassley (R–IA), Hatch (R–UT), Kyl (R–AZ), Sessions (R–AL), Graham (R–SC), Cornyn (R–TX), Lee (R–UT), Coburn (R–OK).

IV. Section-by-Section Summary of the Bill

Section 1. Short title

This section provides that the legislation may be cited as the "FAA Sunsets Extension Act of 2012."

Section 2. Extension of FISA Amendments Act of 2008 Sunset

This section extends the sunset on Title VII of the Foreign Intelligence Surveillance Act from December 31, 2012 to June 1, 2015.

Section 3. Inspector general reviews

This section clarifies the scope of the authorization for reviews by the inspectors general for agencies and elements of the intelligence community that implement Section 702 of FISA. It ensures that such reviews cover any agency or element that has targeting or minimization procedures approved by the FISA court pursuant to Section 702. Additionally, this section requires that under such inspectors general reviews, an accounting of the number of targets that are later determined to be United States persons be included. Current law only requires an accounting of the number of targets later determined to be located within the United States.

This section also requires a new independent review by the recently established Inspector General of the Intelligence Community, which was created in 2010 (P.L. 111–259). The review requires the Inspector General of the Intelligence Community to report on the procedures and guidelines developed by the intelligence community to implement Section 702 of FISA, with respect to the protection of the privacy rights of United States persons. The Inspector General of the Intelligence Community review must include an evaluation of the limitations, procedures, and guidelines designed to protect United States person privacy rights, as well as an evaluation of the circumstances under which the contents of communications may be searched in order to review the communications of particular United States persons. The Inspector General of the Intelligence Community review is required to be submitted no later than December 31, 2014.

Finally, this section requires an unclassified summary of the findings and conclusions of the Inspector General's report required in this section to be made publicly available.

Section 4. Annual reviews

This section makes changes to the annual review requirements for those agencies and elements of the intelligence community that implement Section 702 of FISA. The changes made under this section are consistent with changes made to the inspector general provisions in Section 3. This section clarifies that annual reviews must be submitted by the head of any agency or element that has targeting or minimization procedures approved by the FISA court pursuant to Section 702. Additionally, this section requires that those annual reviews include an accounting of the number of targets that are later determined to be United States persons. Current law only requires an accounting of the number of targets later determined to be located within the United States.

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 3276, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2012.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3276, the FAA Sunsets Extension Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 3276—FAA Sunsets Extension Act of 2012

S. 3276 would extend the authority of the federal government to conduct surveillance pursuant to the FISA Amendments Act of 2008 (Public Law 110–261). Because CBO does not provide cost estimates for classified programs, this estimate addresses only the budgetary effects on unclassified programs affected by the bill. On that basis, CBO estimates that implementing S. 3276 would have no significant cost to the federal government.

Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

The FISA Amendments Act of 2008 clarified the authority of the federal government to surveil and intercept communications of certain persons located outside the United States. S. 3276 would extend the provisions of that act through June 1, 2015 (otherwise,

they expire after December 31, 2012). As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that S. 3276 would apply to a relatively small number of additional offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

In addition, S. 3276 would require the Inspector General of the Intelligence Community to review certain procedures and guidelines to protect the privacy rights of persons in the United States and prepare a report based on that review. Based on information from the intelligence community, CBO estimates that any additional costs to complete those activities would not be significant in any year.

Because those prosecuted and convicted under S. 3276 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are deposited as revenues in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the relatively small number of cases likely to be affected.

The bill would impose both private-sector and intergovernmental mandates by extending an existing mandate that would require providers of electronic communication services to furnish information. The bill also would extend an existing mandate by exempting electronic communication service providers from liability when they comply with an order to furnish information. CBO cannot determine whether the costs to electronic communication service providers to furnish information as required by the bill or the forgone damages of individuals that sue such providers would exceed the annual threshold established by the Unfunded Mandates Reform Act (UMRA) for private-sector mandates ($146 million in 2012, adjusted annually for inflation). However, few public entities receive requests to provide information, so the costs to intergovernmental entities would be small. The bill also would impose a mandate by extending an existing preemption of state and local liability laws. CBO estimates that the costs to public entities of all the intergovernmental mandates in the bill would be small and well below the annual threshold established in UMRA ($73 million in 2012, adjusted annually for inflation).

On July 19, 2012, CBO transmitted a cost estimate for S. 3276, the FISA Amendments Act Reauthorization Act of 2012, as reported by the Senate Select Committee on Intelligence on June 7, 2012. That version of the bill would not require reviews or reports by the Inspector General of the Intelligence Community; otherwise, the bills are similar and the cost estimates are the same.

On July 2, 2012, CBO transmitted a cost estimate for H.R. 5949, the FISA Amendments Act Reauthorization Act of 2012, as ordered reported by the House Committee on the Judiciary on June 19, 2012. On July 19, 2012, CBO transmitted a cost estimate for H.R. 5949 as reported by the House Permanent Select Committee on Intelligence on June 28, 2012. CBO estimated that both versions of H.R. 5949 would have no significant cost to the federal government.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), J'nell L. Blanco (for the impact on state and local governments), and Elizabeth Bass (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VI. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 3276.

VII. CONCLUSION

The FAA Sunsets Extension Act of 2012, S. 3276, was reported favorably with an amendment to the Senate by the Committee on the Judiciary. The bill, as amended, preserves important surveillance authorities for the collection of foreign intelligence information while enhancing oversight and reporting requirements. The reported measure contains a June 2015 sunset that aligns with the sunset dates for other important provisions of FISA, including the business records provision, the roving wiretap provision, and the "lone wolf" provision. A shorter sunset period ensures appropriate Congressional oversight of the implementation of the FISA Amendments Act. Additionally, the legislation contains new reporting requirements on the implementation of the surveillance authorities with respect to the privacy rights of United States persons. A new review by the Inspector General of the Intelligence Community that spans the entire intelligence community would provide valuable information to Congress as it performs its oversight role. Moreover, an unclassified summary of the findings of this comprehensive report must be made publicly available in order to bolster accountability and transparency. Because the current surveillance authorities are due to expire at the end of this year, the Committee recommends swift action on S. 3276, as reported.

VIII. Additional and Minority Views

ADDITIONAL VIEWS FROM SENATOR DURBIN AND MINORITY VIEWS FROM SENATOR LEE

It is unclear how many communications involving American citizens are collected, stored, and analyzed by the government under Section 702 of the Foreign Intelligence Surveillance Act ("FISA"). However large this number may be, we believe there should be meaningful protections when the government searches through such communications looking for information on individual American citizens. Otherwise, by means of these so-called "backdoor" searches, the government could potentially conduct significant warrantless surveillance on American persons. Current administration of the FISA Amendments Act thus implicates core Fourth Amendment values.

The amendment we introduced would clarify that Section 702 of FISA does not permit the government to search the contents of communications acquired pursuant to Section 702 for the purpose of finding communications of a particular United States person. In effect, the amendment would require that the government obtain a warrant before performing queries within the communications it has collected under Section 702 for the purpose of finding an American person's communications. The amendment excludes from the warrant requirement instances in which an emergency authorization has been obtained, the life or physical safety of the American person targeted by the search is in danger and the search is for the purpose of assisting that person, or where the United States person targeted in the search has consented to that search. The amendment is identical to that offered by Senators Wyden and Udall (CO) during consideration of the bill by the Select Committee on Intelligence.

FISA requires that the government obtain a FISA Court warrant any time it seeks to conduct surveillance on a U.S. person. Indirect surveillance of U.S. persons by means of backdoor searches should be no different. No one disputes that the government may have a legitimate need to conduct queries of information collected under Section 702, and we would think no one is surprised that the government asserts that a warrant requirement would be burdensome. Indeed, that is the precise nature of a warrant requirement—to require the government to articulate and justify the need for its intrusion on the privacy of U.S. persons. Whether under Title III or FISA more generally, the government will often have legitimate needs to conduct searches. But no one would suggest that the existence of a legitimate need for information obviates the need for the government to obtain a warrant in those contexts, and we find the

assertion of this argument with respect to Section 702 similarly unpersuasive.

DICK DURBIN.
MICHAEL S. LEE.

MINORITY VIEWS OF SENATORS GRASSLEY, HATCH, KYL, SESSIONS, GRAHAM, CORNYN AND COBURN

EXPIRING PROVISIONS SHOULD BE EXTENDED TO 2017

On February 8, 2012, Attorney General Eric Holder and Director of National Intelligence James Clapper wrote to Speaker of the House Boehner, Majority Leader Reid, Minority Leader Pelosi, and Minority Leader McConnell urging Congress to reauthorize Title VII of the Foreign Intelligence Surveillance Act (FISA), enacted by the FISA Amendments Act of 2008 (FAA) which is set to expire at the end of this year. In that letter, Attorney General Holder and Director Clapper wrote, "Intelligence collection under Title VII has produced and continues to produce significant intelligence that is vital to protect the nation against international terrorism and other threats." [1] The letter described the critical importance of Title VII, including Section 702, which authorizes surveillance of non-U.S. persons located overseas who are of foreign intelligence value. The authors added that "[r]eauthorizing this authority is the top legislative priority of the Intelligence Community." [2]

Title VII of FISA includes several valuable tools, described more fully below, which allow the Intelligence Community to quickly gather information on terrorist threats and intelligence leads. Most notably, Section 702 authorizes, with approval from the Foreign Intelligence Surveillance Court (FISC), electronic surveillance of non-U.S. persons located overseas, but without the need for individualized orders for every target of the surveillance, as is required for surveillance of anyone inside the United States. According to the Director of National Intelligence and Attorney General, Section 702 gives the Intelligence Community the flexibility to rapidly respond to a wide variety of threats against the United States.[3] The Attorney General and the Director of National Intelligence warned that failure to reauthorize Title VII of FISA would "result in a loss of significant intelligence and the ability of the Intelligence Community to respond quickly to new threats and intelligence opportunities." [4]

On May 22, 2012, in a 13–2 bipartisan vote, the Senate Select Committee on Intelligence (SSCI) reported out S. 3276, FAA Sunsets Extension Act of 2012, without amendment. The bill does exactly what the Administration requested; namely, it provides a clean reauthorization through June 1, 2017. It simply replaces the current date of December 31, 2012 in the statute with the new

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[1] Letter from James R. Clapper, Director of National Intelligence, and Eric Holder, Attorney General, to John Boehner, Speaker of the House, Harry Reid, Senate Majority Leader, Nancy Pelosi, House Minority Leader, and Mitch McConnell, Senate Minority Leader (February 8, 2012) (on file with U.S. Senate Judiciary Committee minority staff).

[2] Id.

[3] Id.

[4] Id.

date. In reporting the bill to the Senate floor, the SSCI stated that Title VII "has been implemented with attention to protecting the privacy and civil oversight of U.S. persons, and has been subject to extensive oversight by the Executive branch, the FISC, as well as Congress." [5]

In reaching its conclusion, the SSCI found that:

- Section 702 of FISA is narrowly tailored to ensure that it may only be used to target non-U.S. persons located abroad;
- Congress recognized at the time the FISA Amendments Act was enacted, it was not possible to collect information from a foreign target without also collecting information about people with whom that target was communicating. Therefore, Congress mandated that the Attorney General adopt, and the FISC approve, procedures to minimize the acquisition, retention, and dissemination of information concerning U.S. persons.
- These minimization procedures, along with the numerous reporting requirements already in existence under FISA "enable the Committee to evaluate the extent to which [minimization] procedures are effective in protecting the privacy and civil liberties of U.S. persons."
- The Inspector Generals of the National Security Agency (NSA) and the Intelligence Community are currently conducting a review to determine whether it is feasible to estimate the number of people located in the U.S. whose communications may have been incidentally collected under Section 702 of FISA, and therefore no amendments on this subject are necessary.[6]

Chairman Feinstein issued Additional Views to the Committee's report, explaining why the SSCI rejected several amendments which sought to shorten the sunset provision and add additional burdens on the Intelligence Community. The Chairman wrote that after several hearings, numerous staff meetings with Intelligence Community representatives, and reviews of classified reports and FISC documents as part of its oversight function, the SSCI concluded that existing FAA provisions were adequate to protect the privacy and civil liberties of U.S. persons.

SSCI Chairman Feinstein concluded that:

> Ultimately, it is in the Nation's interest to see this statute reauthorized, and the first priority of this Congress, must be to ensure that this important law does not lapse at the end of the year. The Committee's action to report a clean bill that would extend the sunsets of the FISA Amendments Act, without amendment that could impede its ultimate enactment, is an important step in ensuring this result.[7]

We agree with Chairman Feinstein's statement. A clean version of S. 3276 (i.e., without amendment) would simply extend the sunset date from December 31, 2012 to June 1, 2017. That is the only change that should be made to the statute. Our oversight of the implementation of the statute has found no evidence that it has been

[5] FAA Sunsets Extension Act of 2012, S. Rep. No. 112–174, at 2 (2012) (majority report).
[6] Id. at 8.
[7] *Id.* at 9.

intentionally misused or that more oversight is needed. A clean bill would allow the Intelligence Community to continue utilizing these valuable tools against potential terrorists or other intelligence targets without interruption or delay and will provide the Intelligence Community with much needed certainty and stability.

Title VII provides not only valuable intelligence tools but also privacy protections. It was designed to facilitate the collection of intelligence information about non-U.S. persons abroad while balancing the Fourth Amendment rights of U.S. persons whose communications are incidentally collected in the course of such surveillance. No changes are therefore necessary to the statute.

Section 702

As noted above, Section 702 authorizes, with approval of the FISC, electronic surveillance of non-U.S. persons located overseas, but without the need for individualized orders for every target of the surveillance.[8] Section 702 specifically prohibits targeting U.S. persons, acquiring wholly domestic communications, or targeting someone outside the U.S. with the intent to collect information on a target inside the U.S. (known as "reverse-targeting"). Thus, since the target of any surveillance is a non-U.S. person, the only way that a U.S. citizen's privacy is potentially compromised is if that U.S. person is in contact with the foreign target. In essence, the surveillance only incidentally affects U.S. persons. Section 702 also requires that the government demonstrate to the FISC that it has "targeting procedures" that are designed to weed out intentional collection of communications of anyone located inside the United States, that the Intelligence Community uses "minimization procedures" that restrict the use of any information about U.S. persons that is incidentally collected, and that it has "acquisition guidelines" that ensure that the statutory limits on collection are obeyed.

Under Section 702, the FISC reviews and approves annual certifications from the Attorney General and Director of National Intelligence about collection of information on categories of foreign intelligence targets, what procedures the Intelligence Community will use to accomplish this surveillance, how they will target subjects for surveillance, and how the Intelligence Community will use the information. This format allows the FISC to review on whom and how the Intelligence Community is conducting surveillance while also protecting the constitutional rights of U.S. persons.

In addition, FISA requires that the Attorney General and Director of National Intelligence conduct semi-annual assessments of the Intelligence Community's compliance with the targeting and minimization procedures and the acquisition guidelines and report to Congress on the results of their audits. Separately, they internally review compliance every 60 days. Furthermore, the statute authorizes the Inspector General of the Department of Justice to review the program at any time and requires that significant opinions of the FISC and the FISC appellate court be provided to Congress.

The combination of the statutory limitations on collection, targeting and minimization procedures, and acquisition guidelines, FISC review of those procedures and guidelines, and compliance

[8] 50 U.S.C. § 1881a.

oversight by the Administration and Congress, ensure that the rights of U.S. persons are sufficiently protected when their communications are incidentally collected in the course of targeting non-U.S. persons located abroad.

Sections 703 and 704

Sections 703[9] and 704[10] cover electronic surveillance or searches of stored communications of U.S. persons who are located abroad, when conducted in the United States, and other searches of U.S. persons abroad, respectively. They require that the government obtain authorization from the FISC for such searches, and such authorization is dependent on showing of probable cause that the targeted U.S. person is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power.

AMENDMENTS IN COMMITTEE

Despite the Administration's desire to pass a clean bill with an extension to 2017, and the SSCI's thoughtful conclusions in reporting such a bill, the Chairman proceeded with a substitute amendment. The substitute amendment is unnecessary. It will simply delay passage of a critical national security bill and provide uncertainty for our national security operators in the field. Indeed, the substitute creates a risk that the statute will be allowed to sunset, causing operational problems and the loss of a valuable and productive national security tool.

The substitute amendment: (1) seeks to shorten the sunset provision from June 1, 2017 to June 1, 2015; (2) requires the Inspector Generals of the various Intelligence Community agencies to review the acquisition, use, and dissemination of Section 702 information; (3) requires the Inspector General of the Intelligence Community to review the acquisition, use, and dissemination of Section 702 information and evaluate its impact on the privacy rights of U.S. citizens; and (4) requires the Inspector General to produce and publicly release an unclassified report of its findings.

First of all, by shortening the extension of the Title VII provisions to less than three years, Congress fails to provide needed certainty and predictability to law enforcement and counterterrorism officials. The Majority argues that in shortening the sunset to June 1, 2015, it provides "Congress with the opportunity to consider these important surveillance provisions in a comprehensive manner" with other expiring provisions of FISA—sections 206 and 215 of the USA PATRIOT Act (the "roving wiretap" and "business records" provisions) and section 6001(a) of the Intelligence Reform and Terrorism Protection Act (the "lone wolf" provision).[11] While addressing the extension of these statutes together may offer some convenience, it is problematic.

By aligning the expiration of the FAA with expiring provisions of the USA PATRIOT Act, we run the risk of failing to authorize not one, but two sets of vital national security tools. Such risks and unpredictability factor into how intelligence and counter-terrorism operations are designed. If those charged with protecting our na-

[9] 50 U.S.C. 1881b.
[10] 50 U.S.C. 1881c.
[11] *Id.* at 6–7.

tional security are concerned with whether such a valuable tool will disappear in the middle of an operation, they may choose to forego the utilization of the tool and apply their resources elsewhere by using less effective, but more stable techniques. Further, by focusing on a host of national security tools at once, as opposed to in alternating authorization cycles, it limits the focus and scrutiny that is placed on each individual provision, potentially weakening the current level of oversight provided to these tools.

The majority's report itself provides an example of the danger of attempting to reauthorize differing tools at the same time. The report—deliberately or not—obfuscates the crucial differences between Title VII of FISA and other parts of the statute. In describing the activities conducted under Section 702, the report uses the loaded phrase, "domestic electronic surveillance." [12] This phrase implies that the U.S. government intentionally collects, without a warrant, domestic communications of U.S. persons under Section 702. It does not. The Section 702 program targets non-U.S. persons who are located abroad. At the most, it would only incidentally collect an international communication of a U.S. person if that U.S. person happened to communicate with a targeted person who is outside the United States. Nevertheless, the canard that Title VII is a "domestic surveillance program" directed at U.S. citizens and not requiring warrants, in violation of the Constitution, is widespread. Title VII has a different purpose and legal basis than those domestic surveillance provisions authorized elsewhere in the statute. Therefore, mixing together discussion of these different tools only confuses and complicates dispassionate oversight of each one.

Neither this Committee, the SSCI, nor the Administration has found instances where the expiring provisions have been intentionally or systematically misused. As the SSCI Chairman reported in the Committee report, "Through four years of oversight, the Committee has not identified a single case where a government official engaged in a willful effort to circumvent or violate the law." [13] In fact, Chairman Leahy himself has admitted, "I do not believe that there is any evidence that the law has been abused, or that the communications of U.S. persons are being intentionally targeted." [14] Given the robust oversight in place, a shortened sunset date aligning multiple national security authorizations creates instability, provides no benefits, and potentially weakens the level of scrutiny the provisions are given in alternating authorization cycles.

Secondly, we believe that the law as currently authorized contains significant oversight and review by the various Inspectors General. Section 702(1)(2) specifically authorizes "[t]he Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence information under [the FAA]" the authority to review compliance with the law.[15] Nowhere in this authorization

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[12] *Id.* at 4.
[13] *Id.* at 7.
[14] Senator Patrick J. Leahy, "Opening Statement, Executive Business Meeting," (July 19, 2012), *available at:* http://www.leahy.senate.gov/press/senate-judiciary-committee-approves-leahy-authored-substitute-amendment-to-reauthorization-of-fisa-amendments-act.
[15] 50 U.S.C. § 1881a(1)(2) (2006).

are the Inspectors General limited to a single review. In fact, while the Inspector General for the Department of Justice just issued the first compliance report on Section 702 on September 12, 2012, nothing in the statute precludes the Inspector General from continuing to review compliance with Section 702 in the future.

The current authorization for the Inspectors General is in line with the general mission of Inspectors General, namely, identifying fraud, waste, and abuse within a government agency. The substitute amendment would deviate from this current authorization and would instead elevate the role of the Inspectors General from independent watchdog to that of potential policy maker. For example, the substitute amendment would delegate decisions about what constitutes "privacy" to the Inspectors General authorizing them to make value judgments about the worth of the Section 702 foreign intelligence collected as compared to the Inspector General's view of privacy interests. The amendment never defines "privacy," an inherently vague and broad term that would be left to the Inspector General to define as he preferred based on his understanding of its meaning. This is beyond both the authority and capability of an Inspector General. Policy analysis should be left to policymakers. In particular, determining the relative worth of intelligence information with potentially competing concepts of "privacy" should be the role of Congress. We cannot outsource our responsibility for making such determinations to others. We have all the information necessary to make such determinations, and leaving it to someone else is abandoning our responsibilities. In fact, the process of reauthorizing the legislation has enabled the Committee to investigate this very subject.

Thirdly, the substitute amendment requires the Inspector General to issue an "unclassified summary of the findings of [the] comprehensive report"[16] the amendment authorizes. While we agree that transparency is the hallmark of a good and open government, national security programs such as those authorized under FAA deal with our nation's most sensitive information used to protect American lives. If the Inspector General were to issue an unclassified report based upon a review of classified information, the resulting report would be so heavily redacted that it would be incomprehensible and of little use to those who would seek to review it. There would be no context, no facts, and no application of facts to law. Such a report would be of no value or utility to the American people because the basis of any conclusion would be redacted. The report would raise more questions than it answers—which is perhaps the ultimate goal of such a provision.

There were a number of additional amendments offered by Minority members of the Committee that were debated and voted on during the Committee's executive business meeting. These amendments dealt with important national security topics including the criminal penalties associated with weapons of mass destruction, criminalizing rewards for facilitating international terrorism, disclosure of memoranda authorizing the targeted killing of United States citizens abroad, an audit of federal criminal wiretap applications, and Congressional notification for targeted killing of United

[16] FAA Sunsets Extension Act of 2012, S. Rep. No. 112–174, at 11 (2012) (majority report).

States citizens abroad. Unfortunately, aside from amendments offered by Senator Kyl and Senator Lee, all amendments offered by the Minority members were subject to motions to table. This decision by members of the Majority to move to table amendments offered by the Minority is troubling and a break from the usual Committee practice to vote on amendments dealing with complex and difficult subject matters.

Instead, Majority members argued that amendments should be germane and relevant to the underlying legislation in order to obtain an up or down vote. Each of these amendments dealt with important and pressing national security matters and should have received an open and fair debate. At least one of these amendments had previously passed the Committee on a bipartisan voice vote during debate of the extension of expiring provisions of the USA PATRIOT Act.[17] It is imperative that these issues receive an open and fair debate in the Committee and it is concerning that these amendments were subjected to a germaneness and relevance standard, especially given the fact that the Majority Leader has routinely prevented Minority senators from offering and debating important topics on the Senate floor.

Finally, it is worth noting that the Majority's Committee Report fails to accurately detail the events that transpired on the afternoon of July 19, 2012, when the vote on final passage of S. 3276, the FAA Sunsets Extension Act, as amended, occurred. The Majority's description notes that the final tally of votes was 10 Yeas and 8 Nays. However, during the initial roll call vote the final tally was initially 9 Yeas and 9 Nays, with Senator Durbin voting against S. 3276 as amended.[18] However, after the Chairman asked if any member wished to change his or her vote, Senator Durbin stated that while Chairman Leahy's bill was a "positive step forward" and still "needs a lot of work," he ultimately changed his vote in order for the bill to be reported to the Senate floor.[19]

CONCLUSION

We agree with the thirteen bi-partisan members of the SSCI that this important piece of national security legislation should pass without amendment and without delay. We also agree with the 301 members of the House of Representatives who voted on September 12, 2012, to extend the FAA, without amendment, through December 31, 2017.[20] We disagree with substitute amendment adopted by the Majority as it makes unnecessary changes to the statute that do little more than risk the necessary reauthorization of these authorities. Simply put, the FAA has and will continue to provide vital foreign intelligence information necessary for the Nation's security. Extending the expiring provisions without amendment pro-

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[17] *See* The USA PATRIOT Act Sunset Extension Act of 2011, S. Rep. No. 112–13, at 21 (2011) (adopting an amendment by Senator Grassley adding the death penalty as a punishment for certain crimes involving weapons of mass destruction).

[18] *See* Joanna Anderson, *Surveillance Authority Extension Gets Senate Panel's Support,* Cong. Quarterly, July 19, 2012, *available at http://www.cq.com/doc/committees-2012071900298886?wr=eFF6U1QqRXM3azFlbndPUmNaS3c2dw* (noting that "Durbin initially voted against advancing the bill to the full Senate, but [later] relented . . .").

[19] *Id.*

[20] FISA Amendments Act Reauthorization Act of 2012, H.R. 5949, 112th Cong. (2012).

vides the operational continuity that agents on the ground, at home and abroad, need and deserve.

CHARLES E. GRASSLEY.
ORRIN G. HATCH.
JON KYL.
JEFF SESSIONS.
LINDSEY GRAHAM.
JOHN CORNYN.
TOM COBURN.

IX. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S.3276, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 50—WAR AND NATIONAL DEFENSE

* * * * * * *

CHAPTER 36—FOREIGN INTELLIGENCE SURVEILLANCE ACT

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

Section 702. Procedures for targeting certain persons outside the United States other than United States persons.

(1) ASSESSMENTS AND REVIEWS.—

(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f) and shall submit each assessment to—

(A) the Foreign Intelligence Surveillance Court; and

(B) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(i) the congressional intelligence committees; and

(ii) the Committees on the Judiciary of the House of Representatives and the Senate.

(2) AGENCY ASSESSMENT.—The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community [authorized to acquire foreign intelligence information under subsection (a)] *with targeting or minimization procedures approved under this section,* with respect to the department or element of such Inspector General—

(A) are authorized to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f);

(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be *United States persons or* located in the United States, and to the extent possible, whether communications of such targets were reviewed; and

(D) shall provide each **[**such review**]** *review conducted under this paragraph* to—

(i) the Attorney General;

(ii) the Director of National Intelligence; **[**and**]**

(*iii*) *the Inspector General of the Intelligence Community; and*

[(iii)**]** (*iv*) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

(3) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY REVIEW.—

(A) IN GENERAL.—The Inspector General of the Intelligence Community is authorized to review the acquisition, use, and dissemination of information acquired under subsection (a) in order to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f), and in order to conduct the review required by subparagraph (B).

(B) MANDATORY REVIEW.—The Inspector General of the Intelligence Community shall review the procedures and guidelines developed by the Intelligence Community to implement this section, with respect to the protection of the privacy rights of United States persons, including—

(i) an evaluation of the limitations outlined in subsection (b), the procedures approved in accordance with subsections (d) and (e), and the guidelines outlined in subsection (f), with respect to the protection of the privacy rights of United States persons; and

(ii) an evaluation of the circumstances under which the contents of communications acquired pursuant to subsection (a) may be searched in order to review the communications of particular United States persons.

(C) CONSIDERATION OF OTHER REVIEWS AND ASSESSMENTS.—The review conducted under subparagraph (B) should take into consideration, to the extent relevant and appropriate, any reviews and assessments that have been completed or are being undertaken under this section.

(D) REPORT.—Not later than December 31, 2014, the Inspector General of the Intelligence Community shall submit a report regarding the review conducted under subparagraph (B) to—

(i) the Attorney General;

(ii) the Director of National Intelligence; and

(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

(E) PUBLIC REPORTING OF FINDINGS AND CONCLUSIONS.—In a manner consistent with the protection of the national security of the United States, and in unclassified form, the Inspector General of the Intelligence Community shall make publicly available a summary of the findings and conclusions of the review conducted under subparagraph (B).

(4) [(3)] ANNUAL REVIEW.—

(A) REQUIREMENT TO CONDUCT.—The head of each element of the intelligence community [conducting an acquisition authorized under subsection (a)] *with targeting or minimization procedures approved under this section* shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from [the acquisition] *acquisitions authorized under subsection (a)*. [The annual review] *As applicable, the annual review* shall provide, with respect to acquisitions authorized under subsection (a)—

(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;

(ii) an accounting of the number of United States-person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

(iii) the number of targets that were later determined to be *United States persons or* located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the

acquisitions authorized under subsection (a) acquired the communications of United States persons, and the results of any such assessment.

* * * * * * *

FISA Amendments Act of 2008

Public Law No. 110–261

50 U.S.C. 1881 note

Section 403. Repeals.

(b) FISA AMENDMENTS ACT OF 2008.—

(1) IN GENERAL.—Except as provided in section 404, effective [December 31, 2012] *June 1, 2015,* title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective [December 31, 2012] *June 1, 2015*—

(A) the table of contents in the first section of such Act (50 U.S.C. 1801 et seq.) is amended by striking the items related to title VII;

(B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C. 1871(a)(1)) is amended to read as such section read on the day before the date of the enactment of this Act; and

(C) except as provided in section 404, section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by striking "or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978".

Section 404. Transition Procedures.

(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.

(1) ORDERS IN EFFECT ON [DECEMBER 31, 2012] *JUNE 1, 2015.*—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

* * * * * * *

APPENDIX

FEB 08 2012

The Honorable John Boehner
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Democratic Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

Dear Speaker Boehner and Leaders Reid, Pelosi, and McConnell:

We are writing to urge that the Congress reauthorize Title VII of the Foreign Intelligence Surveillance Act (FISA) enacted by the FISA Amendments Act of 2008 (FAA), which is set to expire at the end of this year. Title VII of FISA allows the Intelligence Community to collect vital information about international terrorists and other important targets overseas. Reauthorizing this authority is the top legislative priority of the Intelligence Community.

One provision, section 702, authorizes surveillance directed at non-U.S. persons located overseas who are of foreign intelligence importance. At the same time, it provides a comprehensive regime of oversight by all three branches of Government to protect the privacy and civil liberties of U.S. persons. Under section 702, the Attorney General and the Director of National Intelligence may authorize annually, with the approval of the Foreign Intelligence Surveillance Court (FISC), intelligence collection targeting categories of non-U.S. persons abroad, without the need for a court order for each individual target. Within this framework, *no* acquisition may intentionally target a U.S. person, here or abroad, or any other person known to be in the United States. The law requires special procedures designed to ensure that all such acquisitions target only non-U.S. persons outside the United States, and to protect the privacy of U.S. persons

whose nonpublic information may be incidentally acquired. The Department of Justice and the Office of the Director of National Intelligence conduct extensive oversight reviews of section 702 activities at least once every sixty days, and Title VII requires us to report to the Congress on implementation and compliance twice a year.

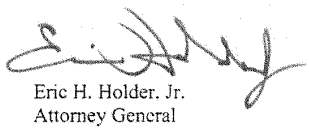
A separate provision of Title VII requires that surveillance directed at U.S. persons overseas be approved by the FISC in each individual case, based on a finding that there is probable cause to believe that the target is a foreign power or an agent, officer, or employee of a foreign power. Before the enactment of the FAA, the Attorney General could authorize such collection without court approval. This provision thus increases the protection given to U.S. persons.

The attached background paper provides additional unclassified information on the structure, operation and oversight of Title VII of FISA.

Intelligence collection under Title VII has produced and continues to produce significant intelligence that is vital to protect the nation against international terrorism and other threats. We welcome the opportunity to provide additional information to members concerning these authorities in a classified setting. We are always considering whether there are changes that could be made to improve the law in a manner consistent with the privacy and civil liberties interests of Americans. Our first priority, however, is reauthorization of these authorities in their current form. We look forward to working with you to ensure the speedy enactment of legislation reauthorizing Title VII, without amendment, to avoid any interruption in our use of these authorities to protect the American people.

Sincerely,

James R. Clapper
Director of National Intelligence



Eric H. Holder, Jr.
Attorney General

Enclosure

Background Paper on Title VII of FISA Prepared by the Department of Justice and the Office of Director of National Intelligence (ODNI)

This paper describes the provisions of Title VII of the Foreign Intelligence Surveillance Act (FISA) that were added by the FISA Amendments Act of 2008 (FAA).[1] Title VII has proven to be an extremely valuable authority in protecting our nation from terrorism and other national security threats. Title VII is set to expire at the end of this year, and its reauthorization is the top legislative priority of the Intelligence Community.

The FAA added a new section 702 to FISA, permitting the Foreign Intelligence Surveillance Court (FISC) to approve surveillance of terrorist suspects and other foreign intelligence targets who are *non-U.S. persons outside the United States*, without the need for individualized court orders. Section 702 includes a series of protections and oversight measures to safeguard the privacy and civil liberties interests of U.S. persons. FISA continues to include its original electronic surveillance provisions, meaning that, in most cases,[2] an individualized court order, based on probable cause that the target is a foreign power or an agent of a foreign power, is still required to conduct electronic surveillance of targets inside the United States. Indeed, other provisions of Title VII extend these protections to U.S. persons overseas. The extensive oversight measures used to implement these authorities demonstrate that the Government has used this capability in the manner contemplated by Congress, taking great care to protect privacy and civil liberties interests.

This paper begins by describing how section 702 works, its importance to the Intelligence Community, and its extensive oversight provisions. Next, it turns briefly to the other changes made to FISA by the FAA, including section 704, which requires an order from the FISC before the Government may engage in surveillance targeted at U.S. persons overseas. Third, this paper describes the reporting to Congress that the Executive Branch has done under Title VII of FISA. Finally, this paper explains why the Administration believes it is essential that Congress reauthorize Title VII.

1. Section 702 Provides Valuable Foreign Intelligence Information About Terrorists and Other Targets Overseas, While Protecting the Privacy and Civil Liberties of Americans

Section 702 permits the FISC to approve surveillance of terrorist suspects and other targets who are non-U.S. persons outside the United States, without the need for individualized court orders. The FISC may approve surveillance of these kinds of targets

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[1] Title VII of FISA is codified at 50 U.S.C. §§ 1881-1881g.

[2] In very limited circumstances, FISA expressly permits surveillance without a court order. *See, e.g.*, 50 U.S.C. § 1805(e) (Attorney General may approve emergency surveillance if the standards of the statute are met and he submits an application to the FISC within seven days).

when the Government needs the assistance of an electronic communications service provider.

Before the enactment of the FAA and its predecessor legislation, in order to conduct the kind of surveillance authorized by section 702, FISA was interpreted to require that the Government show on an individualized basis, with respect to all non-U.S. person targets located overseas, that there was probable cause to believe that the target was a foreign power or an agent of a foreign power, and to obtain an order from the FISC approving the surveillance on this basis. In effect, the Intelligence Community treated non-U.S. persons located overseas like persons in the United States, even though foreigners outside the United States generally are not entitled to the protections of the Fourth Amendment. Although FISA's original procedures are proper for electronic surveillance of persons inside this country, such a process for surveillance of terrorist suspects overseas can slow, or even prevent, the Government's acquisition of vital information, without enhancing the privacy interests of Americans. Since its enactment in 2008, section 702 has significantly increased the Government's ability to act quickly.

Under section 702, instead of issuing individual court orders, the FISC approves annual certifications submitted by the Attorney General and the DNI that identify categories of foreign intelligence targets. The provision contains a number of important protections for U.S. persons and others in the United States. First, the Attorney General and the DNI must certify that a significant purpose of the acquisition is to obtain foreign intelligence information. Second, an acquisition may not intentionally target a U.S. person. Third, it may not intentionally target any person known at the time of acquisition to be in the United States. Fourth, it may not target someone outside the United States for the purpose of targeting a particular, known person in this country. Fifth, section 702 prohibits the intentional acquisition of "any communication as to which the sender and all intended recipients are known at the time of the acquisition" to be in the United States. Finally, it requires that any acquisition be consistent with the Fourth Amendment.

To implement these provisions, section 702 requires targeting procedures, minimization procedures, and acquisition guidelines. The targeting procedures are designed to ensure that an acquisition only targets persons outside the United States, and that it complies with the restriction on acquiring wholly domestic communications. The minimization procedures protect the identities of U.S. persons, and any nonpublic information concerning them that may be incidentally acquired. The acquisition guidelines seek to ensure compliance with all of the limitations of section 702 described above, and to ensure that the Government files an application with the FISC when required by FISA.

The FISC reviews the targeting and minimization procedures for compliance with the requirements of both the statute and the Fourth Amendment. Although the FISC does not approve the acquisition guidelines, it receives them, as do the appropriate congressional committees. By approving the certifications submitted by the Attorney General and the DNI as well as by approving the targeting and minimization procedures,

the FISC plays a major role in ensuring that acquisitions under section 702 are conducted in a lawful and appropriate manner.

Section 702 is vital in keeping the nation safe. It provides information about the plans and identities of terrorists, allowing us to glimpse inside terrorist organizations and obtain information about how those groups function and receive support. In addition, it lets us collect information about the intentions and capabilities of weapons proliferators and other foreign adversaries who threaten the United States. Failure to reauthorize section 702 would result in a loss of significant intelligence and impede the ability of the Intelligence Community to respond quickly to new threats and intelligence opportunities. Although this unclassified paper cannot discuss more specifically the nature of the information acquired under section 702 or its significance, the Intelligence Community is prepared to provide Members of Congress with detailed classified briefings as appropriate.

The Executive Branch is committed to ensuring that its use of section 702 is consistent with the law, the FISC's orders, and the privacy and civil liberties interests of U.S. persons. The Intelligence Community, the Department of Justice, and the FISC all oversee the use of section 702. In addition, congressional committees conduct essential oversight, which is discussed in section 3 below.

Oversight of activities conducted under section 702 begins with components in the intelligence agencies themselves, including their Inspectors General. The targeting procedures, described above, seek to ensure that an acquisition targets only persons outside the United States and that it complies with section 702's restriction on acquiring wholly domestic communications. For example, the targeting procedures for the National Security Agency (NSA) require training of agency analysts, and audits of the databases they use. NSA's Signals Intelligence Directorate also conducts other oversight activities, including spot checks of targeting decisions. With the strong support of Congress, NSA has established a compliance office, which is responsible for developing, implementing, and monitoring a comprehensive mission compliance program.

Agencies using section 702 authority must report promptly to the Department of Justice and ODNI incidents of noncompliance with the targeting or minimization procedures or the acquisition guidelines. Attorneys in the National Security Division (NSD) of the Department routinely review the agencies' targeting decisions. At least once every 60 days, NSD and ODNI conduct oversight of the agencies' activities under section 702. These reviews are normally conducted on-site by a joint team from NSD and ODNI. The team evaluates and, where appropriate, investigates each potential incident of noncompliance, and conducts a detailed review of agencies' targeting and minimization decisions.

Using the reviews by Department of Justice and ODNI personnel, the Attorney General and the DNI conduct a semi-annual assessment, as required by section 702, of compliance with the targeting and minimization procedures and the acquisition guidelines. The assessments have found that agencies have "continued to implement the

procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702." The reviews have not found "any intentional attempt to circumvent or violate" legal requirements. Rather, agency personnel "are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States."[3]

Section 702 thus enables the Government to collect information effectively and efficiently about foreign targets overseas and in a manner that protects the privacy and civil liberties of Americans. Through rigorous oversight, the Government is able to evaluate whether changes are needed to the procedures or guidelines, and what other steps may be appropriate to safeguard the privacy of personal information. In addition, the Department of Justice provides the joint assessments and other reports to the FISC. The FISC has been actively involved in the review of section 702 collection. Together, all of these mechanisms ensure thorough and continuous oversight of section 702 activities.

2. Other Important Provisions of Title VII of FISA Also Should Be Reauthorized

In contrast to section 702, which focuses on foreign targets, section 704 provides heightened protection for collection activities conducted overseas and directed against U.S. persons located outside the United States. Section 704 requires an order from the FISC in circumstances in which the target has "a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes." It also requires a showing of probable cause that the targeted U.S. person is "a foreign power, an agent of a foreign power, or an officer or employee of a foreign power." Previously, these activities were outside the scope of FISA and governed exclusively by section 2.5 of Executive Order 12333.[4] By requiring the approval of the FISC, section 704 enhanced the civil liberties of U.S. persons.

The FAA also added several other provisions to FISA. Section 703 complements section 704 and permits the FISC to authorize an application targeting a U.S. person outside the United States to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or data, and is conducted in the United States. Because the target is a U.S. person, section 703 requires an individualized court order and a showing of probable cause that the target is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power. Other sections of Title VII allow the Government to obtain various

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[3] *Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Submitted by the Attorney General and the Director of National Intelligence, Reporting Period: December 1, 2010 – May 31, 2011* at 2-3, 5 (December 2011).

[4] Since before the enactment of the FAA, section 2.5 of Executive Order 12333 has required the Attorney General to approve the use by the Intelligence Community against U.S. persons abroad of "any technique for which a warrant would be required if undertaken for law enforcement purposes." The Attorney General must find that there is probable cause to believe that the U.S. person is a foreign power or an agent of a foreign power. The provisions of section 2.5 continue to apply to these activities, in addition to the requirements of section 704.

authorities simultaneously, govern the use of information in litigation, and provide for congressional oversight. Section 708 clarifies that nothing in Title VII is intended to limit the Government's ability to obtain authorizations under other parts of FISA.

3. Congress Has Been Kept Fully Informed, and Conducts Vigorous Oversight, of Title VII's Implementation

FISA imposes substantial reporting requirements on the Government to ensure effective congressional oversight of these authorities. Twice a year, the Attorney General must "fully inform, in a manner consistent with national security," the Intelligence and Judiciary Committees about the implementation of Title VII. With respect to section 702, this semi-annual report must include copies of certifications and significant FISC pleadings and orders. It also must describe any compliance incidents, any use of emergency authorities, and the FISC's review of the Government's pleadings. With respect to sections 703 and 704, the report must include the number of applications made, and the number granted, modified, or denied by the FISC.

Section 702 requires the Government to provide to the Intelligence and Judiciary Committees its assessment of compliance with the targeting and minimization procedures and the acquisition guidelines. In addition, Title VI of FISA requires a summary of significant legal interpretations of FISA in matters before the FISC or the Foreign Intelligence Surveillance Court of Review. The requirement extends to interpretations presented in applications or pleadings filed with either court by the Department of Justice. In addition to the summary, the Department must provide copies of judicial decisions that include significant interpretations of FISA within 45 days.

The Government has complied with the substantial reporting requirements imposed by FISA to ensure effective congressional oversight of these authorities. The Government has informed the Intelligence and Judiciary Committees of acquisitions authorized under section 702; reported, in detail, on the results of the reviews and on compliance incidents and remedial efforts; made all written reports on these reviews available to the Committees; and provided summaries of significant interpretations of FISA, as well as copies of relevant judicial opinions and pleadings.

4. It Is Essential That Title VII of FISA Be Reauthorized Well in Advance of Its Expiration

The Administration strongly supports the reauthorization of Title VII of FISA. It was enacted after many months of bipartisan effort and extensive debate. Since its enactment, Executive Branch officials have provided extensive information to Congress on the Government's use of Title VII, including reports, testimony, and numerous briefings for Members and their staffs. This extensive record demonstrates the proven value of these authorities, and the commitment of the Government to their lawful and responsible use.

Reauthorization will ensure continued certainty with the rules used by Government employees and our private partners. The Intelligence Community has invested significant human and financial resources to enable its personnel and technological systems to acquire and review vital data quickly and lawfully. Our adversaries, of course, seek to hide the most important information from us. It is at best inefficient and at worst unworkable for agencies to develop new technologies and procedures and train employees, only to have a statutory framework subject to wholesale revision. This is particularly true at a time of limited resources. It is essential that these authorities remain in place without interruption—and without the threat of interruption—so that those who have been entrusted with their use can continue to protect our nation from its enemies.

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