H. R. 4478

To amend the Foreign Intelligence Surveillance Act of 1978 to improve foreign intelligence collection and the safeguards, accountability, and oversight of acquisitions of foreign intelligence, to extend title VII of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2017

Mr. NUNES introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Intelligence (Permanent Select), Oversight and Government Reform, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to improve foreign intelligence collection and the safeguards, accountability, and oversight of acquisitions of foreign intelligence, to extend title VII of such Act, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “FISA Amendments Reauthorization Act of 2017”.

5
(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

**TITLE I—ENHANCEMENTS TO FOREIGN INTELLIGENCE COLLECTION**

Sec. 101. Section 705 emergency provision.
Sec. 102. Modification to definitions of foreign power and agent of a foreign power.

**TITLE II—SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT**

Sec. 201. Querying procedures required.
Sec. 202. Use and disclosure provisions.
Sec. 203. Congressional review and oversight ofabouts collection.
Sec. 204. Publication of minimization procedures under section 702.
Sec. 205. Compensation of amici curiae and technical experts.
Sec. 206. Additional reporting requirements.
Sec. 207. Procedures regarding dissemination of nonpublicly available information concerning United States persons.
Sec. 208. Improvements to Privacy and Civil Liberties Oversight Board.
Sec. 209. Privacy and civil liberties officers.

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

Sec. 301. Extension of title VII of FISA; effective dates.
Sec. 302. Increased penalty for unauthorized removal and retention of classified documents or material.
Sec. 303. Comptroller General study on the classification system and protection of classified information.
Sec. 304. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.
Sec. 305. Severability.

**SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).
TITLE I—ENHANCEMENTS TO FOREIGN INTELLIGENCE COLLECTION

SEC. 101. SECTION 705 EMERGENCY PROVISION.

Section 705 (50 U.S.C. 1881d) is amended by adding at the end the following:

“(c) EMERGENCY AUTHORIZATION.—

“(1) CONCURRENT AUTHORIZATION.—If the Attorney General authorized the emergency employment of electronic surveillance or a physical search pursuant to section 105 or 304, the Attorney General may authorize, for the effective period of the emergency authorization and subsequent order pursuant to section 105 or 304, without a separate order under section 703 or 704, the targeting of a United States person subject to such emergency employment for the purpose of acquiring foreign intelligence information while such United States person is reasonably believed to be located outside the United States.

“(2) USE OF INFORMATION.—If an application submitted to the Court pursuant to section 104 or 304 is denied, or in any other case in which the acquisition pursuant to paragraph (1) is terminated and no order with respect to the target of the acqui-
sition is issued under section 105 or 304, all infor-
information obtained or evidence derived from such ac-
quisition shall be handled in accordance with section
704(d)(4).”.

SEC. 102. MODIFICATION TO DEFINITIONS OF FOREIGN
POWER AND AGENT OF A FOREIGN POWER.

(a) FOREIGN POWER.—Subsection (a) of section 101
(50 U.S.C. 1801) is amended—

(1) in paragraph (6), by striking “; or” and in-
serting a semicolon;

(2) in paragraph (7), by striking the period at
the end and inserting “; or”; and

(3) by adding at the end the following new
paragraph:

“(8) an entity not substantially composed of
United States persons that is engaged in inter-
national malicious cyber activity, or activities in
preparation therefor, that threatens the national de-
fense or security of the United States.”.

(b) AGENT OF A FOREIGN POWER.—Subsection
(b)(1) of such section (50 U.S.C. 1801) is amended—

(1) in subparagraph (D), by striking “; or” and
inserting a semicolon; and

(2) by adding at the end the following new sub-
paragraph:
“(F) engages in international malicious cyber activity that threatens the national defense or security of the United States, or activities in preparation therefor, for or on behalf of a foreign power, or knowingly aids or abets any person in the conduct of such international malicious cyber activity or activities in preparation therefor, or knowingly conspires with any person to engage in such international malicious cyber activity or activities in preparation therefor; or”.

(c) INTERNATIONAL MALICIOUS CYBER ACTIVITY DEFINED.—Such section (50 U.S.C. 1801) is further amended by adding at the end the following new subsection:

“(q) The term ‘international malicious cyber activity’ means activity on or through an information system (as defined by section 102 of the Cybersecurity Information Sharing Act of 2015 (6 U.S.C. 1501))—

“(1) originating from, or directed by persons located, in whole or in substantial part, outside the United States;

“(2) that seeks to compromise or impair the confidentiality, integrity, or availability of computers, information systems or communications sys-
tems, networks, physical or virtual infrastructure
controlled by computers or information systems, or
information resident thereon; and

“(3) that is not authorized by the United States
Government or otherwise carried out in accordance
with Federal law.”.

TITLE II—SAFEGUARDS, AC-
COUNTABILITY, AND OVER-
SIGHT

SEC. 201. QUERYING PROCEDURES REQUIRED.

(a) QUERYING PROCEDURES.—

(1) IN GENERAL.—Section 702 (50 U.S.C.
1881a) is amended—

(A) by redesignating subsections (f)
through (l) as subsections (g) through (m), re-
spectively; and

(B) by inserting after subsection (e) the
following new subsection:

“(f) QUERIES.—

“(1) PROCEDURES REQUIRED.—

“(A) REQUIREMENT TO ADOPT.—The At-
torney General, in consultation with the Direc-
tor of National Intelligence, shall adopt
querying procedures consistent with the require-
ments of the Fourth Amendment to the Con-
stitution of the United States for information collected pursuant to an authorization under subsection (a).

“(B) RECORD OF UNITED STATES PERSON QUERY TERMS.—The Attorney General, in consultation with the Director of National Intelligence, shall ensure that the procedures adopted under subparagraph (A) include a technical procedure whereby a record is kept of each United States person query term used for a query.

“(C) JUDICIAL REVIEW.—The procedures adopted in accordance with subparagraph (A) shall be subject to judicial review pursuant to subsection (j).

“(2) COURT ORDERS FOR ACCESS OF CONTENTS FROM CERTAIN QUERIES.—

“(A) DISCRETION TO APPLY FOR COURT ORDER.—Before accessing the contents of communications acquired under subsection (a) that were retrieved using a United States person query term that was not designed to find and extract foreign intelligence information, the Federal Bureau of Investigation may apply for an order of the Court under subparagraph (C).
“(B) JURISDICTION.—The Court shall have jurisdiction to review an application and to enter an order approving the access described in subparagraph (A).

“(C) APPLICATION.—Each application for an order under this paragraph shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subparagraph (B). Each application shall require the approval of the Attorney General based upon the finding of the Attorney General that the application satisfies the criteria and requirements of such application, as set forth in this paragraph, and shall include—

“(i) the identity of the Federal officer making the application; and

“(ii) an affidavit or other information containing a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant that the contents of communications described in subparagraph (A) covered by the application would provide evidence of—

“(I) criminal activity;
“(II) contraband, fruits of a crime, or other items illegally possessed by a third party; or

“(III) property designed for use, intended for use, or used in committing a crime.

“(D) ORDER.—Upon an application made pursuant to subparagraph (C), the Court shall enter an order approving the access of the contents of communications described in subparagraph (A) covered by the application if the Court finds probable cause to believe that such contents would provide any of the evidence described in subparagraph (C)(ii).

“(3) QUERY DEFINED.—In this subsection, the term ‘query’ means any instance in which information the United States Government has acquired is searched using one or more specific terms for the purpose of discovering or retrieving unminimized contents or noncontents of the communications of United States persons.”.

(2) APPLICATION.—Subsection (f) of section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), as added by paragraph (1), shall apply with respect to certifications submitted
under subsection (h) of such section to the Foreign Intelligence Surveillance Court after January 1, 2018.

(b) **Conforming Amendments.**—

(1) **Amendments to Section 702 of FISA.**—

Such section 702 is further amended—

(A) in subsection (a), by striking “with subsection (i)(3)” and inserting “with subsections (j)(3)”;

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking “with subsection (g)” and inserting “with subsection (h)”;

(ii) in paragraph (2), by striking “to subsection (i)(3)” and inserting “to subsection (j)(3)”;

(iii) in paragraph (3)—

(I) in subparagraph (A), by striking “with subsection (g)” and inserting “with subsection (h)”;

(II) in subparagraph (B)—

(aa) by striking “to subsection (i)(1)(C)” and inserting “to subsection (j)(1)(C)”;

and
(bb) by striking “under subsection (i)” and inserting “under subsection (j)”;

(C) in subsection (d)(2), by striking “to subsection (i)” and inserting “to subsection (j)”;

(D) in subsection (e)(2), by striking “to subsection (i)” and inserting “to subsection (j)”;

(E) in subsection (h), as redesignated by subsection (a)(1)—

(i) in paragraph (2)(A)(iii), by striking “with subsection (f)” and inserting “with subsection (g)”;

(ii) in paragraph (3), by striking “with subsection (i)(1)(C)” and inserting “with subsection (j)(1)(C)”;

(iii) in paragraph (6), by striking “to subsection (i)” and inserting “to subsection (j)”;

(F) in subsection (j), as redesignated by subsection (a)(1)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “targeting and minimization pro-
cedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) in subparagraph (B), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”; and

(III) in subparagraph (C), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(ii) in paragraph (2)—
(I) in subparagraph (A), by strik-
ing “with subsection (g)” and insert-
ing “with subsection (h)”; and

(II) by adding at the end the fol-
lowing:

“(D) QUERYING PROCEDURES.—The querying procedures adopted in accordance with subsection (f)(1) to assess whether such proce-
dures comply with the requirements of such subsection.”;

(iii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) by striking “with sub-
section (g)” and inserting “with subsection (h)”;

(bb) by striking “targeting and minimization procedures adopted in accordance with sub-
sections (d) and (e)” and insert-
ing “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) in subparagraph (B), in the
matter before clause (i)—
(aa) by striking “with subsection (g)” and inserting “with subsection (h)”; and

(bb) by striking “with subsections (d) and (e)” and inserting “with subsections (d), (e), and (f)(1)”; and

(iv) in paragraph (5)(A)—

(I) by striking “with subsection (g)” and inserting “with subsection (h)”; and

(II) by striking “with subsections (d) and (e)” and inserting “with subsections (d), (e), and (f)(1)”; and

(G) in subsection (m), as redesignated by subsection (a)(1)—

(i) in paragraph (1), in the matter before subparagraph (A)—

(I) by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”; and
(II) by striking “with subsection (f)” and inserting “with subsection (g)”; and
(ii) in paragraph (2)(A)—

(I) by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”; and

(II) by striking “with subsection (f)” and inserting “with subsection (g)”.  

(2) AMENDMENTS TO FISA.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended—

(A) by striking “section 702(h)” each place it appears and inserting “section 702(i)”;

(B) by striking “section 702(g)” each place it appears and inserting “section 702(h)”;

and

(C) in section 707(b)(1)(G)(ii), by striking “subsections (d), (e), and (f)” and inserting “subsections (d), (e), (f)(1), and (g)”.

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(A) in subsection (a)(7)(B)—

(i) by striking “under section 702(i)(3)” and inserting “under section 702(j)(3)”;

(ii) by striking “of section 702(i)(4)” and inserting “of section 702(j)(4)”;

(B) in subsection (b)—

(i) in paragraph (3)—

(I) in subparagraph (A), by striking “to section 702(h)” and inserting “to section 702(i)”;

(ii) in paragraph (4)—

(aa) by striking “section 702(h)(3) of” and inserting “section 702(i)(3) of”; and

(bb) by striking “to section 702(h)” and inserting “to section 702(i)”;

(ii) in paragraph (4)—
(I) in subparagraph (A), by strik-
ing “and sections 702(l)” and insert-
ing “and sections 702(m)”; and

(II) in subparagraph (B)(iv), by
striking “or section 702(l)” and in-
serting “or section 702(m)”.

SEC. 202. USE AND DISCLOSURE PROVISIONS.

(a) END USE RESTRICTION.—Section 706(a) (50
U.S.C. 1881e(a)) is amended—

(1) by striking “Information acquired” and in-
serting the following:

“(1) IN GENERAL.—Information acquired”; and

(2) by adding at the end the following:

“(2) UNITED STATES PERSONS.—

“(A) IN GENERAL.—Any information con-
cerning a United States person acquired under
section 702 shall not be used in evidence
against that United States person pursuant to
paragraph (1) in any criminal proceeding un-
less—

“(i) the Federal Bureau of Investiga-
tion obtained an order of the Foreign In-
telligence Surveillance Court to access such
information pursuant to section 702(f)(2);

or
“(ii) the Attorney General determines that—

“(I) the criminal proceeding affects, involves, or is related to the national security of the United States; or

“(II) the criminal proceeding involves—

“(aa) death;

“(bb) kidnapping;

“(cc) serious bodily injury, as defined in section 1365 of title 18, United States Code;

“(dd) conduct that constitutes a criminal offense that is a specified offense against a minor, as defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006 (34 U.S.C. 20911);

“(ee) incapacitation or destruction of critical infrastructure, as defined in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e));
“(ff) cybersecurity, including conduct described in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e)) or section 1029, 1030, or 2511 of title 18, United States Code;

“(gg) transnational crime, including transnational narcotics trafficking and transnational organized crime; or

“(hh) human trafficking.

“(B) No Judicial Review.—A determination by the Attorney General under subparagraph (A)(ii) is not subject to judicial review.”.

(b) Intelligence Community Disclosure Provision.—Section 603 (50 U.S.C. 1873) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking “good faith estimate of the number of targets of such orders;” and inserting the following: “good faith estimate of—

“(A) the number of targets of such orders;

“(B) the number of targets of such orders who are known to not be United States persons;” and
“(C) the number of targets of such orders who are known to be United States persons;”;

(B) in paragraph (2)—

(i) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(ii) by inserting before subparagraph (B), as so redesignated, the following:

“(A) the number of targets of such orders;”;

(iii) in subparagraph (B), as so redesignated, by striking “and” at the end; and

(iv) by adding at the end the following:

“(D) the number of instances in which the Federal Bureau of Investigation has received and reviewed the unminimized contents of electronic communications or wire communications concerning a United States person obtained through acquisitions authorized under such section in response to a search term that was reasonably designed to find evidence of a crime that would not be considered foreign intelligence information; and
“(E) the number of instances in which the Federal Bureau of Investigation opened, under the Criminal Investigative Division or any successor division, an investigation of a United States person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under such section;”;

(C) in paragraph (3)(A), by striking “orders; and” and inserting the following: “orders, including—

“(i) the number of targets of such orders who are known to not be United States persons; and

“(ii) the number of targets of such orders who are known to be United States persons; and”; 

(D) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

(E) by inserting after paragraph (3) the following:

“(4) the number of criminal proceedings in which the United States or a State or political subdivision thereof provided notice pursuant to subsection (c) or (d) of section 106 (including with re-
spect to information acquired from an acquisition conducted under section 702) or subsection (d) or (e) of section 305 of the intent of the government to enter into evidence or otherwise use or disclose any information obtained or derived from electronic surveillance, physical search, or an acquisition conducted pursuant to this Act;”;

(2) in subsection (d)—

(A) in paragraph (1), by striking “(4), or (5)” and inserting “(5), or (6)”;

(B) in paragraph (2)(A), by striking “(2)(A), (2)(B), and (5)(C)” and inserting “(2)(B), (2)(C), and (6)(C)”;

(C) in paragraph (3)(A), in the matter preceding clause (i), by striking “subsection (b)(2)(B)” and inserting “subsection (b)(2)(C)”.

SEC. 203. CONGRESSIONAL REVIEW AND OVERSIGHT OF ABOUTS COLLECTION.

(a) In General.—Section 702(b) (50 U.S.C. 1881a(b)) is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) by redesignating paragraph (5) as paragraph (6); and
(3) by inserting after paragraph (4) the fol-
lowing:

“(5) may not intentionally acquire communica-
tions that contain a reference to, but are not to or
from, a facility, place, premises, or property at
which an acquisition authorized under subsection (a)
is directed or conducted, except as provided under
section 203(b) of the FISA Amendments Reauthor-
ization Act of 2017; and”.

(b) CONGRESSIONAL REVIEW AND OVERSIGHT OF
ABOUTS COLLECTION.—

(1) DEFINITIONS.—In this subsection:

(A) The term “abouts communication”
means a communication that contains reference
to, but is not to or from, a facility, a place,
premises, or property at which an acquisition
authorized under section 702(a) of the Foreign
Intelligence Surveillance Act of 1978 (50
U.S.C. 1881a(a)) is directed or conducted.

(B) The term “material breach” means
significant noncompliance with applicable law or
an order of the Foreign Intelligence Surveil-
ance Court concerning any acquisition of
abouts communications.

(2) SUBMISSION TO CONGRESS.—
(A) REQUIREMENT.—Notwithstanding any other provision of law, and except as provided in paragraph (4), if the Attorney General and the Director of National Intelligence intend to implement the authorization of the intentional acquisition of abouts communications, before the first such implementation after the date of enactment of this Act, the Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a written notice of the intent to implement the authorization of such an acquisition, and any supporting materials in accordance with this subsection.

(B) CONGRESSIONAL REVIEW PERIOD.—During the 30-day period beginning on the date written notice is submitted under subparagraph (A), the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives shall, as appro-
appropriate, hold hearings and briefings and otherwise obtain information in order to fully review the written notice.

(C) **Limitation on action during congressional review period.**—Notwithstanding any other provision of law, and subject to paragraph (4), unless the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)), the Attorney General and the Director of National Intelligence may not implement the authorization of the intentional acquisition of abouts communications before the end of the period described in subparagraph (B).

(3) **Written notice.**—Written notice under paragraph (2)(A) shall include the following:

(A) A copy of any certification submitted to the Foreign Intelligence Surveillance Court pursuant to subsection section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), or amendment thereto, authorizing the intentional acquisition of abouts communications, including all affidavits, proce-
dures, exhibits, and attachments submitted therewith.

(B) The decision, order, or opinion of the Foreign Intelligence Surveillance Court approving such certification, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion.

(C) A summary of the protections in place to detect any material breach.

(D) Data or other results of modeling, simulation, or auditing of sample data demonstrating that any acquisition method involving the intentional acquisition of abouts communications shall be conducted in accordance with title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.), if such data or other results exist at the time the written notice is submitted and were provided to the Foreign Intelligence Surveillance Court.

(E) Except as provided under paragraph (4), a statement that no acquisition authorized under subsection (a) of such section 702 shall include the intentional acquisition of an abouts
communication until after the end of the 30-day period described in paragraph (2)(B).

(4) EXCEPTION FOR EMERGENCY ACQUISITION.—

(A) NOTICE OF DETERMINATION.—If the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)) with respect to the intentional acquisition ofabouts communications, the Attorney General and the Director of National Intelligence shall notify the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives as soon as practicable, but not later than 7 days after the determination is made.

(B) IMPLEMENTATION OR CONTINUATION.—

(i) IN GENERAL.—If the Foreign Intelligence Surveillance Court approves a certification that authorizes the intentional acquisition ofabouts communications be-
fore the end of the 30-day period described in paragraph (2)(B), the Attorney General and the Director of National Intelligence may authorize the immediate implementation or continuation of that certification if the Attorney General and the Director of National Intelligence jointly determine that exigent circumstances exist such that without such immediate implementation or continuation intelligence important to the national security of the United States may be lost or not timely acquired.

(ii) NOTICE.—The Attorney General and Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives notification of a determination pursuant to clause (i) as soon as practicable, but not later than 3 days after the determination is made.
(5) Reporting of material breach.—Subsection (m) of section 702 (50 U.S.C. 1881a), as redesignated by section 201, is amended—

(A) in the heading by striking “AND REVIEWS” and inserting “REVIEWS, AND REPORTING”; and

(B) by adding at the end the following new paragraph:

“(4) Reporting of material breach.—

“(A) In general.—The head of each element of the intelligence community involved in the acquisition of abouts communications shall fully and currently inform the Committees on the Judiciary of the House of Representatives and the Senate and the congressional intelligence committees of a material breach.

“(B) Definitions.—In this paragraph:

“(i) The term ‘abouts communication’ means a communication that contains reference to, but is not to or from, a facility, a place, premises, or property at which an acquisition authorized under subsection (a) is directed or conducted.

“(ii) The term ‘material breach’ means significant noncompliance with ap-
licable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.”

(6) APPOINTMENT OF AMICI CURIAE BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—For purposes of section 103(i)(2)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)(2)(A)), the Foreign Intelligence Surveillance Court shall treat the first certification under section 702(g) of such Act (50 U.S.C. 1881a(g)) or amendment thereto that authorizes the acquisition of abouts communications as presenting a novel or significant interpretation of the law, unless the court determines otherwise.

SEC. 204. PUBLICATION OF MINIMIZATION PROCEDURES UNDER SECTION 702.

Section 702(e) (50 U.S.C. 1881a(e)) is amended by adding at the end the following new paragraph:

“(3) PUBLICATION.—The Director of National Intelligence, in consultation with the Attorney General, shall—

“(A) conduct a declassification review of any minimization procedures adopted or amended in accordance with paragraph (1); and
“(B) consistent with such review, and not later than 180 days after conducting such re-
view, make such minimization procedures publicly available to the greatest extent practicable, which may be in redacted form.”.

SEC. 205. COMPENSATION OF AMICI CURIAE AND TECHNICAL EXPERTS.

Subsection (i) of section 103 (50 U.S.C. 1803) is amended by adding at the end the following:

“(11) COMPENSATION.—Notwithstanding any other provision of law, a court established under subsection (a) or (b) may compensate an amicus curiae appointed under paragraph (2) for assistance provided under such paragraph as the court considers appropriate and at such rate as the court considers appropriate.”.

SEC. 206. ADDITIONAL REPORTING REQUIREMENTS.

(a) ELECTRONIC SURVEILLANCE.—Section 107 (50 U.S.C. 1807) is amended to read as follows:

“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.

“(a) ANNUAL REPORT.—In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to the congressional intelligence committees and the Committees on the Judiciary of the House of Representatives and the Senate a re-
port setting forth with respect to the preceding calendar year—

“(1) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title;

“(2) the total number of such orders and extensions either granted, modified, or denied; and

“(3) the total number of persons who were subject to electronic surveillance conducted under an order or emergency authorization under this title, rounded to the nearest 500, including the number of such individuals who are United States persons, reported to the nearest band of 500, starting with 0–499.

“(b) FORM.—Each report under subsection (a) shall be submitted in unclassified form, to the extent consistent with national security. Not later than 7 days after the date on which the Attorney General submits each such report, the Attorney General shall make the report publicly available, or, if the Attorney General determines that the report cannot be made publicly available consistent with national security, the Attorney General may make publicly available an unclassified summary of the report or a redacted version of the report.”.
(b) PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 406 (50 U.S.C. 1846) is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ‘‘; and’’ and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following new paragraph:

‘‘(6) a good faith estimate of the total number of subjects who were targeted by the installation and use of a pen register or trap and trace device under an order or emergency authorization issued under this title, rounded to the nearest 500, including—

‘‘(A) the number of such subjects who are United States persons, reported to the nearest band of 500, starting with 0–499; and

‘‘(B) of the number of United States persons described in subparagraph (A), the number of persons whose information acquired pursuant to such order was reviewed or accessed by a Federal officer, employee, or agent, reported to the nearest band of 500, starting with 0–499.’’; and
(2) by adding at the end the following new sub-
section:

“(c) Each report under subsection (b) shall be sub-
mitted in unclassified form, to the extent consistent with
national security. Not later than 7 days after the date on
which the Attorney General submits such a report, the At-
torney General shall make the report publicly available,
or, if the Attorney General determines that the report can-
ot be made publicly available consistent with national se-
curity, the Attorney General may make publicly available
an unclassified summary of the report or a redacted
version of the report.”.

SEC. 207. PROCEDURES REGARDING DISSEMINATION OF
NONPUBLICLY AVAILABLE INFORMATION
CONCERNING UNITED STATES PERSONS.

(a) Procedures.—

(1) In general.—Title V of the National Se-
curity Act of 1947 (50 U.S.C. 3091 et seq.) is
amended by adding at the end the following new sec-
tion:

“SEC. 512. PROCEDURES REGARDING DISSEMINATION OF
NONPUBLICLY AVAILABLE INFORMATION
CONCERNING UNITED STATES PERSONS.

“(a) Procedures.—The head of each element of the
intelligence community, in consultation with the Director
of National Intelligence, shall develop and maintain procedures for that element to respond to covered requests.

“(b) REQUIREMENTS.—The procedures under subsection (a) shall ensure, at a minimum, the following:

“(1) The originating element documents in writing each covered request received by the element, including—

“(A) the name or title of the individual of the requesting element who is making the request;

“(B) the name or title of each individual who will receive the United States person identity information sought by the covered request; and

“(C) a fact-based justification describing why such United States person identity information is required by each individual described in subparagraph (B) to carry out the duties of the individual.

“(2) A covered request may only be approved by the head of the originating element or by officers or employees of such element to whom the head has specifically delegated such authority.
“(3) The originating element retains records on covered requests, including the disposition of such requests, for not less than 5 years.

“(4) The records described in paragraph (3) include, with respect to approved covered requests, the name or title of the individual of the originating element who approved such request.

“(5) The procedures include an exception that—

“(A) allows for the immediate disclosure of United States person identity information in the event of exigent circumstances or where a delay could result in the loss of intelligence; and

“(B) requires that promptly after such disclosure the requesting element makes a covered request with respect to such information.

“(6) If a covered request is made during a period beginning on the date of a general election for President and ending on the date on which such President is inaugurated—

“(A) the documentation under paragraph (1) includes whether—

“(i) the individual of a requesting element who is making the request knows or believes that any United States person...
identity sought by the request is of an individual who is a member of the transition team of the President-elect and Vice-President-elect; or

“(ii) based on the intelligence community report to which the request pertains, the originating element knows or reasonably believes that any United States person identity sought by the request is of an individual who is a member of the transition team of the President-elect and Vice-President-elect;

“(B) the approval made pursuant to paragraph (2) of a covered request that contains a United States person identity described in subparagraph (A) is subject to the concurrence of the general counsel of the originating element (or, in the absence of the general counsel, the first assistant general counsel) that the dissemination of such identity information is in accordance with the procedures under subsection (a); and

“(C) consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intel-
intelligence sources and methods or other exceptionally sensitive matters, the head of the originating element notifies the chairmen and ranking minority members of the congressional intelligence committees of any approval described in subparagraph (B) by not later than 14 days after the date of such approval.

“(c) **Annual Reports.**—Not later than April 30 of each year, the head of each element of the intelligence community shall submit to the congressional intelligence committees a report documenting, with respect to the year covered by the report—

“(1) the total number of covered requests received by that element;

“(2) of such total number, the number of requests approved;

“(3) of such total number, the number of requests denied; and

“(4) for each number calculated under paragraphs (1) through (3), the number listed by each requesting element.

“(d) **Certain Procedures Regarding Congressional Identity Information.**—

“(1) **Requirements.**—With respect to the dissemination of congressional identity information, the
head of each element of the intelligence community shall carry out this section in accordance with annex A of Intelligence Community Directive 112, or successor annex or directive.

“(2) NOTIFICATION.—The Director of National Intelligence may not modify or supersede annex A of Intelligence Community Directive 112, or successor annex or directive, unless—

“(A) the Director notifies the congressional intelligence committees of the proposed modifications or new annex or directive; and

“(B) a period of 30 days elapses following such notification.

“(e) EFFECT ON MINIMIZATION PROCEDURES.—The requirements of this section are in addition to any minimization procedures established pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), Executive Order No. 12333 (50 U.S.C. 3001 note), or successor order, or other relevant provision of law or Executive order.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘covered request’ means a request by a requesting element to an originating element for nonpublic identifying information with respect to a known unconsenting United States person.
that was omitted from an intelligence community report disseminated by the originating element.

“(2) The term ‘originating element’ means an element of the intelligence community that disseminates an intelligence community report that contains a reference to a known unconsenting United States person but omits nonpublic identifying information with respect to such person.

“(3) The term ‘requesting element’ means an element of the United States Government that receives an intelligence community report from an originating element and makes a covered request with respect to such report.

“(4) The term ‘United States person’ has the meaning given the term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).”.

(2) CLERICAL AMENDMENT.—The table of contents in the first section of the National Security Act of 1947 is amended by inserting after the item relating to section 511 the following new item:

“Sec. 512. Procedures regarding dissemination of nonpublicly available information concerning United States persons.”.

(b) DEVELOPMENT OF PROCEDURES.—The head of each element of the intelligence community shall develop the procedures required by section 512(a) of the National
Security Act of 1947, as added by subsection (a)(1), by not later than 90 days after the date of the enactment of this Act.

(c) Report.—Not later than December 31, 2018, the Director of National Intelligence shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report assessing the compliance with the procedures required by section 512(a) of the National Security Act of 1947, as added by subsection (a)(1).

SEC. 208. IMPROVEMENTS TO PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) Appointment of Staff.—Subsection (j) of section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

“(2) Appointment in Absence of Chairman.—If the position of chairman of the Board is vacant, during the period of the vacancy, the Board, at the direction of the unanimous vote of the serving members of the Board, may exercise the authority of the chairman under paragraph (1).”
(b) MEETINGS.—Subsection (f) of such section (42 U.S.C. 2000ee(f)) is amended—

(1) by striking “The Board shall” and inserting “The Board”; 

(2) in paragraph (1) by striking “make its” and inserting “shall make its”; and 

(3) in paragraph (2)—

(A) by striking “hold public” and inserting “shall hold public”; and 

(B) by inserting before the period at the end the following: “, but may, notwithstanding section 552b of title 5, United States Code, meet or otherwise communicate in any number to confer or deliberate in a manner that is closed to the public”.

SEC. 209. PRIVACY AND CIVIL LIBERTIES OFFICERS.

Section 1062(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee–1(a)) is amended by inserting “, the Director of the National Security Agency, the Director of the Federal Bureau of Investigation” after “the Director of the Central Intelligence Agency”.
TITLE III—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS

SEC. 301. EXTENSION OF TITLE VII OF FISA; EFFECTIVE DATES.

(a) Extension.—Section 403(b) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2474) is amended—

(1) in paragraph (1)—

(A) by striking “December 31, 2017” and inserting “December 31, 2021”; and

(B) by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “section 101(a)”; and

(2) in paragraph (2) in the matter preceding subparagraph (A), by striking “December 31, 2017” and inserting “December 31, 2021”.

(b) Conforming Amendments.—Section 404(b) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2476), as amended by section 201, is further amended—

(1) in paragraph (1)—
(A) in the heading, by striking “DECEMBER 31, 2017” and inserting “DECEMBER 31, 2021”; and

(B) by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “section 101(a)”;

(2) in paragraph (2), by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “section 101(a)”; and

(3) in paragraph (4)—

(A) by inserting “and amended by the FISA Amendments Reauthorization Act of 2017” after “as added by section 101(a)” both places it appears; and

(B) by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “as amended by section 101(a)” both places it appears.

(c) EFFECTIVE DATE OF AMENDMENTS TO FAA.—The amendments made to the FISA Amendments Act of 2008 (Public Law 110–261) by this section shall take effect on the earlier of the date of the enactment of this Act or December 31, 2017.
SEC. 302. INCREASED PENALTY FOR UNAUTHORIZED REMOVAL AND RETENTION OF CLASSIFIED DOCUMENTS OR MATERIAL.

Section 1924(a) of title 18, United States Code, is amended by striking “one year” and inserting “five years”.

SEC. 303. COMPTROLLER GENERAL STUDY ON THE CLASSIFICATION SYSTEM AND PROTECTION OF CLASSIFIED INFORMATION.

(a) Study.—The Comptroller General of the United States shall conduct a study of the classification system of the United States and the methods by which the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) protects classified information.

(b) Matters Included.—The study under subsection (a) shall address the following:

(1) Whether sensitive information is properly classified.

(2) The effect of modern technology on the storage and protection of classified information, including with respect to—

(A) using cloud storage for classified information; and

(B) any technological means to prevent or detect unauthorized access to such information.
(3) Any ways to improve the classification system of the United States, including with respect to changing the levels of classification used in such system and to reduce overclassification.

(4) How to improve the authorized sharing of classified information, including with respect to sensitive compartmentalized information.

(5) The value of polygraph tests in determining who is authorized to access classified information and in investigating unauthorized disclosures of classified information.

(6) Whether each element of the intelligence community—

(A) applies uniform standards in determining who is authorized to access classified information; and

(B) provides proper training with respect to the handling of classified information and the avoidance of overclassification.

(c) Report.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and
the Select Committee on Intelligence of the Senate a report containing the study under subsection (a).

(d) FORM.—The report under subsection (c) shall be submitted in unclassified form, but may include a classified annex.

SEC. 304. TECHNICAL AMENDMENTS AND AMENDMENTS TO IMPROVE PROCEDURES OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.

(a) TECHNICAL AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended as follows:

(1) In section 103(b) (50 U.S.C. 1803(b)), by striking “designate as the” and inserting “designated as the”.

(2) In section 302(a)(1)(A)(iii) (50 U.S.C. 1822(a)(1)(A)(iii)), by striking “paragraphs (1) through (4)” and inserting “subparagraphs (A) through (D)”.

(3) In section 406(b) (50 U.S.C. 1846(b)), by striking “and to the Committees on the Judiciary of the House of Representatives and the Senate”.

(4) In section 604(a) (50 U.S.C. 1874(a))—

(A) in paragraph (1)(D), by striking “contents” and inserting “contents,”; and
(B) in paragraph (3), by striking “comply in the into” and inserting “comply into”.

(5) In section 701 (50 U.S.C. 1881)—

(A) in subsection (a), by striking “The terms” and inserting “In this title, the terms”;

and

(B) in subsection (b)—

(i) by inserting “In this title:” after the subsection heading; and

(ii) in paragraph (5), by striking “(50 U.S.C. 401a(4))” and inserting “(50 U.S.C. 3003(4))”.


(7) In section 801(7) (50 U.S.C. 1885(7)), by striking “(50 U.S.C. 401a(4))” and inserting “(50 U.S.C. 3003(4))”.

(b) COURT-RELATED AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended as follows:

(1) In section 103 (50 U.S.C. 1803)—

(A) in subsection (b), by striking “immediately”; and
(B) in subsection (h), by striking “the court established under subsection (a)” and inserting “a court established under this section”.

(2) In section 105(d) (50 U.S.C. 1805(d)), by adding at the end the following new paragraph:

“(4) A denial of the application made under section 104 may be reviewed as provided in section 103.”.

(3) In section 302(d) (50 U.S.C. 1822(d)), by striking “immediately”.

(4) In section 402(d) (50 U.S.C. 1842(d)), by adding at the end the following new paragraph:

“(3) A denial of the application made under this subsection may be reviewed as provided in section 103.”.

(5) In section 403(e) (50 U.S.C. 1843(e)), by adding at the end the following new paragraph:

“(3) A denial of the application made under subsection (a)(2) may be reviewed as provided in section 103.”.

(6) In section 501(c) (50 U.S.C. 1861(c)), by adding at the end the following new paragraph:

“(4) A denial of the application made under this subsection may be reviewed as provided in section 103.”.
SEC. 305. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.