



Forum for American Leadership

Section 702: Current Status and What's at Stake

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Section 702 of the *Foreign Intelligence Surveillance Act*—which is set to expire unless it is reauthorized by December 31, 2023—has been included in the National Defense Authorization Act conference report and would be extended until April 19, 2024 once the final NDAA passes. While this extension would give Congress more time to negotiate, it still means that lawmakers need to settle on a viable solution to continued disagreements on 702 sooner rather than later.

As discussed in the previous FAL [Intelligence](#) Working Group primer on the [subject](#), Section 702 authorizes the National Security Agency (NSA), the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the National Counterterrorism Center (NCTC) to **collect information about non-U.S. citizens who are overseas**. It may not be directed against Americans at home or abroad nor may it be used to collect against a foreign person overseas if the intended purpose is to target someone located in the United States. All four of these IC agencies utilize Section 702-acquired information daily to disrupt threats to the United States, including terrorist attacks, hackers, drug traffickers, foreign spies attempting to target Americans, proliferators of weapons of mass destruction, and other threats.

For example:

- Section 702 serves as a foundation of the most important intelligence product produced by the intelligence community, the President's Daily Brief (PDB). Sixty percent of the articles in the PDB contain information [sourced](#) from Section 702 collection.
- Section 702-acquired information has been [used](#) to identify foreign ransomware attacks on U.S. critical infrastructure, which has in some instances prevented significant attacks on U.S. networks. It has identified threats to U.S. troops, disrupted planned terrorist attacks in the United States and abroad, contributed to the successful U.S. operation against Ayman al-Zawahiri in 2022, and has identified key economic security risks, including industrial espionage by foreign actors.
- Additionally, section 702 queries have been critical to [blocking](#) shipments of advanced weapons components to Iran, demonstrating the enduring importance of the authority.

If the authority is not maintained, it will jeopardize the intelligence community's ability to track external threats to the United States. U.S. policymakers will lose vital decision space to respond to national security threats posed by China, Russia, narcotics traffickers, and foreign terrorists. In October, the FBI Director [warned](#) that “the actions of Hamas’ and its allies will serve as an inspiration the likes of which we haven’t seen since ISIS launched its so-called caliphate years ago.” In short, as one of the most consequential authorities for national security, by far, Section 702 must be reauthorized.

What is the Status of Section 702's Reauthorization?

Since the publication of FAL's last Section 702 [primer](#) in March 2023, there has been substantial debate and discussion about whether and how Section 702 can be reauthorized either in its current

form or with legislative reforms. As of early December, bills led by the House Intelligence Permanent Select Committee on Intelligence (HPSCI) Chairman Mike Turner (R-OH) and Senate Select Committee on Intelligence (SSCI) Chairman Mark Warner (D-VA) and Vice Chairman Marco Rubio (R-FL), along with Senate Judiciary Committee Ranking Member Lindsey Graham (R-SC), suggested common-sense, impactful reform; meanwhile, a separate bill led by Senator Ron Wyden (D-OR) and Rep. Zoe Lofgren (D-CA) suggested changes that would severely hamper the FBI's ability to engage in counterintelligence and counterterrorism investigations.

- In July, the President's Intelligence Advisory Board (PIAB) and the Intelligence Oversight Board released a [report](#) supporting 702 reauthorization with thirteen recommendations on how to address previous misuses. Most notably, the commission recommended that the FBI's "authority to conduct queries for evidence of a non-national security-related crime" through Section 702 be terminated and that Section 702 pre-approval standards across the IC be standardized. Also notably, the report reflected divided opinions within the PIAB. In a statement in connection with the report's release, National Security Advisor Jake Sullivan and Deputy National Security Advisor Jon Finer [endorsed](#) the report's recommendation that Section 702 be reauthorized "without new and operationally damaging restrictions" on reviewing intelligence and with oversight reforms.
- On November 7, a bipartisan and bicameral group of legislators, led by Sen. Wyden (D-OR), Sen. Mike Lee (R-UT), Rep. Warren Davidson (R-OH), and Rep. Lofgren, [introduced](#) a [bill](#) to reauthorize Section 702 for four years while prohibiting relevant agencies from searching 702 information for U.S. citizen communications without a court-issued warrant. In the bill's release, Wyden and his co-sponsors referenced a July 2023 FISA court opinion that [detailed](#) how FBI personnel had improperly accessed information pertaining to a U.S. senator in 2022 and other cases of inappropriate targeting. Media reports [quoted](#) Biden administration officials who described the legislation as "operationally unworkable" by requiring that intelligence agencies go to court before accessing "already lawfully collected information." Indeed, such blanket warrants would make it extremely difficult for the IC to collect information in time to act on it.
- On November 16, HPSCI Republicans released a Section 702 [report](#) that detailed the need for reauthorization and put forward 45 reform proposals centered around the FBI's ability to query information and FISA court procedures. Several reforms were proposed to heighten penalties for abuses and allow Congress to trigger mandatory inspector general reviews into alleged violations. The report also proposed several restrictions on the FBI's activities, compliance reports, audits, and changes in training and processes.
- On December 7, HPSCI unanimously adopted a [bill](#) largely based on the report. It would require a warrant only when the FBI queries the database to seek evidence of a specific crime but not for searches related to national security. This compromise position provides some flexibility while introducing new checks on access to protect privacy.
- On November 28, SSCI Chairman Warner and Vice Chairman Rubio, along with Senate Judiciary Committee Ranking Member Graham and several members of both committees, [introduced](#) legislation that would extend Section 702 until 2035. The bill would not require the FBI to obtain a court warrant for searching U.S. data, but it does prohibit searches conducted solely to find evidence of a crime and adds more compliance requirements on the FBI, including the creation of new compliance officers and an annual report to Congress

about how the FBI accesses FISA data. Both the prohibition and compliance measures are reasonable next steps to ensure there is stringent oversight over privacy.

- On December 6, the House Judiciary Committee under Chairman Jim Jordan (R-OH) marked up the “Protect Liberty and End Warrantless Surveillance Act.” This [bill](#) would prohibit the use of queries on U.S. persons without a court warrant unless an emergency exists involving an “imminent threat of death or serious bodily harm” or in situations in which a “cybersecurity threat signature” is used. The challenge with this approach, however, is that this would preclude most searches related to national security if it does not fit into one of these two buckets of imminent death/bodily harm or for cybersecurity. Further, it could at the very least delay the IC from access to information on China, Russia, counterintelligence investigations, economic espionage, and the flow of fentanyl. HPSCI Chairman Turner criticized the bill for “spend[ing] more time expanding the constitutional rights of foreigners who travel in and out of the United States...[and] creat[ing] civil liability for telecommunications companies that work with our intelligence community voluntarily” rather than focusing on protecting national security.

What happens next?

Some of these proposals would enhance reporting and compliance requirements, require stricter penalties on abuses, and strengthen oversight. However, most of these approaches would add significant new bureaucratic steps. Some of the provisions could create uncertainty as to when an agency can legally conduct searches related to national security. These warrant proposals would handcuff the IC’s ability to acquire timely information.

With weeks left until Section 702 expires, congressional leaders are rushing to find compromise language and rescue the authority, including a short-term extension into April 2024 that would ride on the must-pass NDAA bill, to allow more time to pass a long-term reauthorization. Arguments put forward by some [skeptics](#) that Section 702 will remain valid into April 2024 for “Transition Procedures” even if it expires on December 31, 2023, are short-sighted and dangerous.

Any [lapse](#) or significant change that hinders the use of Section 702 would blind the U.S. to a range of threats, a dangerous risk to take during a time when foreign terrorism is on the rise. Meanwhile, China, Russia, North Korea, and Iran continue to seek opportunities to strike against America and our allies and partners.

Therefore, a measured approach—**one that modernizes the Section 702 authority and allows the intelligence community to continue to pursue national security targets without time-consuming procedural hurdles**—is a reasonable and necessary next step to keep America safe.

This paper is a product of the Forum for American Leadership’s [Intelligence](#) Working Group.

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