

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

S. 139: The FISA Amendments Reauthorization Act of 2017

The following is a section-by-section analysis and explanation of the FISA Amendments Reauthorization Act of 2017 (the Act).

Section 1 – *Short title; table of contents*

Section 1 lists the short title and table of contents of the Act.

Section 2 – *Amendments to the Foreign Intelligence Surveillance Act of 1978*

Section 2 provides clarity that any amendment or repeal shall be considered to be made to a section or other provision of the Foreign Intelligence Surveillance Act of 1978 (FISA), unless otherwise specified.

Title I – Enhancements to Foreign Intelligence Collection and Safeguards, Accountability, and Oversight

Section 101 – *Querying procedures required*

Section 101 requires that the Intelligence Community develop separate procedures related to the querying of lawfully acquired FISA Section 702 information. These procedures will be reviewed by the Foreign Intelligence Surveillance Court (FISC) every year.

In addition, Section 101 institutes a mandatory order requirement such that the FBI must obtain an order to view the content of FISA Section 702 communications that were responsive to U.S. person queries conducted during criminal investigations not related to the national security of the United States. As provided in Section 102 of the Act, if the FBI obtains an order to view the content, the Government may use the communication in a criminal case.

Section 102 – *Use and disclosure provisions*

Section 102 sets restrictions on the Government's use of FISA Section 702 communications of a U.S. person as evidence against that U.S. person in any criminal proceeding unless the FBI obtains an order as described in Section 101 of the Act, or the Attorney General authorizes such use in a criminal proceeding that falls into one of the serious crimes designated in the section. The section also provides for increased transparency by adding new reporting requirements related to various FISA provisions.

Section 103 – *Congressional review and oversight of “abouts” collection*

Section 103 limits the collection of communications that contain a reference to, but are not to or from (i.e. “abouts” collection), a FISA Section 702 foreign intelligence surveillance target. The section provides that the Government may initiate this collection only after obtaining approval from the FISC and submitting all supporting documents to the congressional intelligence and judiciary committees for review no less than 30 days prior to recommencing this type of collection. This section also requires additional incident compliance notification related to “abouts” collection.

Section 103 also presumes the appointment of amici curiae during the FISC’s review of the first FISA Section 702 certification that reconstitutes collection of communications that contain a reference to, but are not to or from, a FISA Section 702 foreign intelligence surveillance target.

Section 104 – *Publication of minimization procedures under Section 702*

Section 104 requires that the Director of National Intelligence and the Attorney General conduct a declassification review and publicly release the FISA Section 702 minimization procedures every year.

Section 105 – *Section 705 emergency fix*

Section 105 adds an emergency authorization provision to FISA Section 705, which governs joint applications and concurrent authorizations.

Section 106 – *Compensation of amici curiae and technical experts*

Section 106 grants the FISC the authority to compensate any appointed amicus curiae.

Section 107 – *Additional reporting requirements*

Section 107 requires additional reporting requirements related to how the Intelligence Community utilizes other sections of FISA.

Section 108 – *Improvements to Privacy and Civil Liberties Oversight Board*

Section 108 reforms the Privacy and Civil Liberties Oversight Board (the Board) such that the Board no longer falls under the requirement for open meetings pursuant to Section 552b(a)(1) of title 5, United States Code. Section 108 also amends the Intelligence Reform and Terrorism Prevention Act of 2004 such that the Board now has the ability to exercise the authority of the Chairman of the Board if such position is vacant or a quorum is absent, so long as such authority is exercised by a unanimous vote of the serving members of the Board.

Section 109 – *Privacy and civil liberties officers*

Section 109 codifies the requirement that certain elements of the Intelligence Community maintain privacy and civil liberties officers.

Section 110 – *Whistleblower protections for contractors of the intelligence community*

Section 110 increases whistleblower protections for Intelligence Community contractors by providing protection from reprisals made in response to Intelligence Community contractors exercising their right to report fraud, waste, or abuse.

Section 111 – *Briefing on notification requirements*

Section 111 requires the Attorney General and Director of National Intelligence to brief the congressional intelligence and judiciary committees on their interpretation of the “derived from” standard in FISA, as well as how the Government interprets certain notification requirements in FISA related to aggrieved persons.

Section 112 – *Inspector General report on queries conducted by Federal Bureau of Investigation*

Section 112 mandates that the Inspector General of the Department of Justice review the FBI’s implementation and interpretation of the FISA Section 702 query procedures and report such findings to the congressional intelligence and judiciary committees.

Title II – Extension of FISA Authorities, Increased Penalties, Reports, and Other Matters

Section 201 – *Extension of title VII of FISA; effective dates*

Section 201 reauthorizes title VII of FISA, which includes FISA Section 702, for six years.

Section 202 – *Increased penalty for unauthorized removal and retention of classified documents or material*

Section 202 increases the penalties for the unauthorized removal and retention of classified documents or material from one year to five years.

Section 203 – *Report on challenges to the effectiveness of foreign intelligence surveillance*

Section 203 requires the Attorney General and Director of National Intelligence to submit to the congressional intelligence and judiciary committees a report on current and future challenges to the effectiveness of FISA surveillance authorities.

Section 204 – *Comptroller General study on the classification system and protection of classified information*

Section 204 requires the Comptroller General to conduct a study and report on the U.S. classification system and how the Intelligence Community protects classified information.

Section 205 – *Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review*

Section 205 makes several technical amendments to FISA and amendments to clarify procedures related to the Foreign Intelligence Surveillance Court of Review.

