

2009 Reauthorization of the USA PATRIOT Act

BACKGROUND

Congress passed the *Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA PATRIOT) Act of 2001* (P.L 107-56) just six weeks after the horrors of September 11, 2001. During the legislative process, AALL, other library associations and many civil liberties groups spoke out about the troubling lack of civil liberties protections and privacy safeguards included in the bill. President George W. Bush signed the flawed bill into law in October 2001.

Title II of the new law included Section 215, the so-called “library provision,” which expanded the Federal Bureau of Investigation’s (FBI) power to require that the recipients of Section 215 orders produce “any tangible thing” (including books, records, papers, and documents) that the FBI claims is relevant to authorized foreign intelligence and international terrorism investigations. As explained in [AALL’s Issue Brief on Section 215](#), these orders come with a “gag order” which prevents its recipients from disclosing the receipt of the gag to anyone other than the attorneys involved in the case and to those who need to know in order to comply with the order.

The PATRIOT Act also expanded the government’s preexisting authority to obtain information through [National Security Letters](#) (NSL). The law granted the government the power to issue an NSL simply by showing that the information sought is relevant to protecting against international terrorism or clandestine intelligence activities. This was a significantly lower standard than pre-PATRIOT Act law, which required the government to demonstrate that the person whose records were being sought was a “foreign power” or “agent of a foreign power.” Although the statute governing NSLs is not scheduled to sunset, Congress has devoted significant attention to the need to reform NSLs after a [March 2007 review](#) by the Department of Justice revealed major abuses of the expanded authority.

The *USA PATRIOT Improvement and Reauthorization Act of 2005* (P.L. 109-177) extended the sunsets for the expiring provisions of the original PATRIOT Act, including Section 215. The Reauthorization Act also added a few protections for libraries, including narrowing the broad standard for issuing an order for records. The law added a provision specifically intended to protect libraries by limiting who could issue the application for an order directed at library circulation records or patron lists. In addition, the law mandated that the Office of the Inspector General of the Department of Justice conduct audits on the use of Section 215 orders.

CURRENT STATUS IN THE 111th CONGRESS (AS OF OCTOBER 2009)

On December 31, 2009, three provisions of the *USA PATRIOT Improvement and Reauthorization Act of 2005* (P.L. 109-177) are again scheduled to expire: Section 206 (roving wiretaps), Section 215, and the lone wolf provision. Congress is currently considering legislation to extend the three provisions, and AALL is carefully monitoring the fast-moving reauthorization process as the sunset date quickly approaches.

Action in the Senate

On September 14, 2009, the Department of Justice sent a [letter](#) to Sen. Patrick Leahy (D-VT), Chairman of the Senate Judiciary Committee, urging the reauthorization of all three expiring provisions. Members of the Senate responded by introducing legislation to address the expiring provisions:

- On September 17, Sen. Russ Feingold (D-WI) and Sen. Richard Durbin (D-IL) introduced the *Judicious Use of Surveillance Tools In Counterterrorism Efforts (JUSTICE) Act of 2009* ([S.1686](#)). The bill offers amendments to the three provisions expiring this year, as well as additional safeguards to the FBI's powers to issue NSLs. The JUSTICE Act would allow the FBI to obtain an order for records only if it has reason to believe that an individual has a connection to terrorism or espionage. It would also impose limits on gag orders and provide meaningful judicial review of Section 215 orders. AALL joined thirty-six organizations on a [letter](#) to the ten co-sponsors in support of the bill.
- On September 22, Chairman Leahy, along with Sen. Benjamin Cardin (D-MD) and Sen. Ted Kaufman (D-DE), introduced a more narrowly tailored bill, the *USA PATRIOT Act Sunset Extension Act of 2009* ([S. 1692](#)). The original version of the bill would have raised the standard for Section 215 orders by requiring that the government demonstrate a connection between the tangible records they seek and a suspected terrorist, and add more meaningful judicial review of Section 215 orders. The bill would have also required judicial review and audits of the use of NSLs. On September 25, AALL sent letters to the [three original co-sponsors](#) to thank them for introducing this important legislation and express our support for S. 1692.
- On September 23, the Senate Judiciary Committee held a hearing on the PATRIOT Act reauthorization. At the hearing, [Assistant Attorney General David Kris](#) reiterated the Administration's position that all three expiring provisions should be reauthorized. [Department of Justice Inspector General \(IG\) Glenn Fine](#) addressed the abuses of NSLs

the IG's office found during separate audits in 2007 and 2008 and the need for continued congressional oversight.

- On September 29, Sen. Jon Kyl (R-AZ) and Sen. John Cornyn (R-TX) introduced the *USA PATRIOT Reauthorization and Additional Weapons Against Terrorism Act of 2009* ([S.1726](#)). AALL opposes this bill because it would renew the three expiring provisions with no modifications to protect the privacy and civil liberties of library users.
- On October 1, the Senate Judiciary Committee's held an Executive Business Meeting to consider legislation to reauthorize the three expiring provisions. Prior to the Business Meeting, Chairman Leahy negotiated a substitute bill with Sen. Dianne Feinstein (D-CA), Chair of the Senate Select Committee on Intelligence. The substitute bill weakened several provisions of the original bill, including certain protections for civil liberties. It also dropped the higher Section 215 standard for business records that was in the original bill, with the exception of library records.
- On October 8, following a classified session the Senate Judiciary Committee held with representatives from the Department of Justice, the committee met once again to consider [S. 1692](#). At the mark-up, committee members agreed to four amendments described by Ranking Member Jeff Sessions (R-AL) as "operational fixes" from the Administration.

One of the agreed upon amendments changed the language in the bill for access to library records. The higher standard for library records was weakened by this amendment to cover only circulation records or patron lists. This addressed the concern expressed by some Republicans and the Administration that libraries could turn into safe havens for terrorists if the FBI was prevented from having expanded access to library records, including computer records. The bill was favorably reported out of committee on October 13 and it will now go to the Senate floor for a vote.

On November 9, Attorney General Eric Holder sent a [letter](#) to Chairman Leahy and Chairman Feinstein expressing the Department of Justice's support for the bill.

- On October 29, Ranking Member Jeff Sessions introduced a new bill, the *USA PATRIOT Reauthorization Act of 2009* ([S.2336](#)), which was referred to the Senate Judiciary Committee. AALL opposes this bill because, like the Kyl bill, it would renew the three expiring provisions with no modifications or additional protections.

Action in the House

- On October 20, 2009, House Judiciary Committee Chairman John Conyers, Jr. (D-MI-14), Rep. Jerrold Nadler (D-NY-8) and Rep. Bobby Scott (D-VA-3) introduced the *USA Patriot Amendments Act of 2009* ([H.R. 3845](#)). Their bill would raise the standard for Section 215 orders to protect private information of library users. It would also restore the pre-PATRIOT Act standard for National Security Letters to ensure that the government obtains financial, communication and credit records only of people believed to be terrorists or spies.
- On October 29, House Permanent Select Committee on Intelligence Chairman Silvestre Reyes (D-TX-16) introduced the *Counterterrorism Authorities Improvements Act of 2009* ([H.R.3969](#)). AALL does not support this bill because it would extend Section 215 with no additional protections for library records.
- On November 3, Rep. Rush Holt (D-NJ-12) introduced the *Judicious Use of Surveillance Tools In Counterterrorism Efforts (JUSTICE) Act of 2009* ([H.R. 4005](#)). This bill is nearly identical to the *JUSTICE Act* introduced by Senators Feingold and Durbin.
- On November 4 and 5, the House Judiciary Committee held a mark-up of the *USA Patriot Amendments Act of 2009* ([H.R. 3845](#)). During the mark-up, the committee adopted several amendments, including Chairman Conyers' [manager's amendment](#) that tightens the standards for issuing National Security Letters and adopts important new reporting, audit and oversight provisions. Importantly, this bill would raise the standard for Section 215 orders to protect the private information of library users. It goes farther than the Senate bill by protecting all library records containing personally identifiable information. On November 5, the Committee reported the bill favorably, as amended.

The Center for Democracy and Technology compiled a [side-by-side comparison](#) of current law, the *PATRIOT Act Sunset Extension Act* ([S. 1692](#)) and H.R. 3845 as reported, to illustrate the differences among them.

Your Help Needed

In just six weeks, the three expiring provisions of the PATRIOT Act will sunset, and we need your help to ensure that H.R. 3845 passes the House before the end of the year. Please [take action now](#) by contacting your House representative to ask that he or she support H.R. 3845 when it goes to the House floor for a vote.

As the December 31 sunset date approaches, the AALL Government Relations Office and Government Relations Committee will continue to monitor developments of the reauthorization of the three expiring provisions. We will keep this Issue Brief updated with new developments.