

2009-2010 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 strongly 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.

AALL strongly opposed Title II of the new law, which included Section 215, the so-called “library provision,” because we believed it would erode the privacy and confidentiality of library patrons. Section 215 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” that 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.

Section 505 of the PATRIOT Act also greatly expanded the government’s authority to obtain information through [National Security Letters](#) (NSLs), which the FBI can issue to require recipients to provide customer account information and transactional communication records, including library records. 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. AALL’s [Issue Brief on National Security Letters](#) includes an analysis of several bills recently introduced to amend the statute governing NSLs.

In 2005, Congress passed and President Bush signed the *USA PATRIOT Improvement and Reauthorization Act of 2005* (P.L. 109-177), reauthorizing the sunsets for the three expiring provisions of the law (Section 215, Section 206 (roving wiretaps), and the lone wolf provision) until December 31, 2009. While AALL had [opposed the reauthorization](#) and were disappointed that Section 215 was extended, the new law did include a few improvements, including 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 (OIG) of the Department of Justice conduct audits on the use of Section 215 orders.

CURRENT STATUS IN THE 111th CONGRESS (AS OF MARCH 2010)

The following sections track Senate and House action to reauthorize Section 215, Section 206, and the lone wolf provision, leading up to President Obama's signature on February 27, 2010 of a one-year extension of all three provisions.

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 provisions. Members of the Senate responded by introducing the following bills to address the 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 JUSTICE Act would have allowed the FBI to obtain an order for records only if it had reason to believe that an individual has a connection to terrorism or espionage. It would have also imposed 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 this strong bill. The bill was referred to the Judiciary Committee but did not receive consideration.
- On September 22, Chairman Leahy, along with Sen. Benjamin Cardin (D-MD) and Sen. Ted Kaufman (D-DE), introduced a more narrowly tailored bill than the Feingold-Durbin 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 express our support for the bill.
- 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](#) also testified, describing the abuses of NSLs that the IG's office found during separate audits in 2007 and 2008 and citing 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 opposed this bill because it would have permanently renewed the three expiring provisions with no modifications to protect the privacy and civil liberties of library users.
- On October 1, the Senate Judiciary Committee held an Executive Business Meeting to consider S. 1692. 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, which weakened several provisions of the original bill. The substitute dropped the higher Section 215 standard for business records, with an exception for 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.

AALL was disappointed with the revised bill, which the committee reported out favorably on October 13. One of most troubling of the agreed upon amendments weakened the higher standard for library records 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.

- 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 opposed this bill because, although it included a sunset, it would have renewed the three expiring provisions with no modifications or additional protections.
- On November 9, Attorney General Eric Holder sent a [letter](#) to Chairman Leahy and Chairman Feinstein expressing the Department of Justice’s support for S. 1692. The letter reiterated the Administration’s views that all three provisions should be reauthorized, and identified several areas where the Administration wanted further discussion with Sen. Leahy and Sen. Feinstein on issues such as the collection, use and storage of information obtained through NSLs and the public reporting and audit requirements laid out in the bill.
- Just before the three provisions were to expire on December 31, the Senate approved a 60-day extension, which the House also passed. The new sunset date was set for February 28, 2010.
- On February 24, 2010, without enough time to reach a compromise on the differing bills in the House and Senate, the Senate voted by unanimous consent for an additional one-year extension of the three provisions.

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 have raised the standard for Section 215 orders to protect the private information of library users. It would have also restored the pre-PATRIOT Act standard for NSLs 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 did not support this bill because it would have extended Section 215 until December 31, 2013 with no additional protections for libraries.
- 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 Sens. 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 Chairman Conyers' [manager's amendment](#) that tightened the standards for issuing NSLs and adopted important new reporting, audit and oversight provisions. We were pleased that this bill went farther than Chairman Leahy's bill (S. 1692) by protecting all library records containing personally identifiable information. On November 5, the Committee reported the bill favorably, as amended.
- In mid-December 2009, the House approved a 60-day extension of the sunset provisions. Speaker of the House Nancy Pelosi and Chairman Conyers cited needing more time to debate the different bills in the House and Senate.
- On February 25, 2010, following the Senate's action, the House voted 315-97 for an additional one-year extension.

President Obama signed the one-year extension into law (P.L. 111-141) on February 27, setting the new sunset date for February 28, 2011. We expect that the House and Senate Judiciary and Intelligence Committees will want to send a new reauthorization bill to the floor before the 111th Congress adjourns at the end of 2010, in which case deliberations will likely resume this summer.

We will continue to work with other library and civil liberties groups to enact additional safeguards and protections for libraries and civil liberties. We will keep this Issue Brief updated with new developments.