

Calendar No. \_\_\_\_\_

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

[Report No. 115-\_\_\_\_]

To extend the FISA Amendments Act of 2008 for 8 years, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. BURR, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To extend the FISA Amendments Act of 2008 for 8 years,  
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FISA Amendments  
5 Reauthorization Act of 2017”.

1 **SEC. 2. EIGHT-YEAR EXTENSION OF FISA AMENDMENTS**

2 **ACT OF 2008.**

3 (a) **EXTENSION.**—Section 403(b) of the FISA  
4 Amendments Act of 2008 (Public Law 110–261; 122 Stat.  
5 2474) is amended—

6 (1) in paragraph (1), by striking “December  
7 31, 2017” and inserting “December 31, 2025”; and

8 (2) in paragraph (2) in the matter preceding  
9 subparagraph (A), by striking “December 31, 2017”  
10 and inserting “December 31, 2025”.

11 (b) **CONFORMING AMENDMENT.**—The heading for  
12 section 404(b)(1) of the FISA Amendments Act of 2008  
13 (Public Law 110–261; 122 Stat. 2476) is amended by  
14 striking “DECEMBER 31, 2017” and inserting “DECEMBER  
15 31, 2025”.

16 **SEC. 3. CONGRESSIONAL REVIEW AND OVERSIGHT OF**

17 **ABOUTS COLLECTION.**

18 (a) **IN GENERAL.**—Section 702(b) of the Foreign In-  
19 telligence Surveillance Act of 1978 (50 U.S.C. 1881a(b))  
20 is amended—

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

23 (2) by redesignating paragraph (5) as para-  
24 graph (6); and

25 (3) by inserting after paragraph (4) the fol-  
26 lowing:

1           “(5) may not intentionally acquire communica-  
2           tions that contain a reference to, but are not to or  
3           from, a facility, place, premises, or property at  
4           which an acquisition authorized under subsection (a)  
5           is directed or conducted, except as provided under  
6           subsection (m); and”.

7           (b) CONGRESSIONAL REVIEW AND OVERSIGHT OF  
8           COMMUNICATIONS OF ABOUTS COLLECTION.—Section  
9           702 of the Foreign Intelligence Surveillance Act (50  
10          U.S.C. 1881a) is amended by adding at the end the fol-  
11          lowing:

12          “(m) CONGRESSIONAL REVIEW AND OVERSIGHT OF  
13          ABOUTS COLLECTION.—

14               “(1) DEFINITIONS.—In this subsection—

15                   “(A) the term ‘abouts communication’  
16                   means a communication that contain reference  
17                   to, but is not to or from, a facility, a place,  
18                   premises, or property at which an acquisition  
19                   authorized under subsection (a) is directed or  
20                   conducted;

21                   “(B) the term ‘material breach’ means sig-  
22                   nificant noncompliance with applicable law or  
23                   an order of the Foreign Intelligence Surveil-  
24                   lance Court concerning any acquisition of  
25                   abouts communications; and

1           “(C) the term ‘qualifying legislation’  
2 means a bill of either House of Congress—

3           “(i) the title of which is as follows ‘A  
4 bill to prohibit the acquisition of abouts  
5 communications.’; and

6           “(ii) the matter after the enacting  
7 clause of which is as follows: ‘Congress dis-  
8 approves the intentional acquisition under  
9 section 702 of the Foreign Intelligence  
10 Surveillance Act of 1978 (50 U.S.C.  
11 1881a) of abouts communications (as de-  
12 fined in subsection (m) of such section  
13 702).’.

14           “(2) SUBMISSION TO CONGRESS.—

15           “(A) REQUIREMENT.—Notwithstanding  
16 any other provision of law, and except as pro-  
17 vided in paragraph (5), if the Attorney General  
18 and the Director of National Intelligence intend  
19 to implement the authorization of the inten-  
20 tional acquisition of abouts communications, be-  
21 fore the first such implementation after the  
22 date of enactment of this subsection, the Attor-  
23 ney General and the Director of National Intel-  
24 ligence shall submit to the Committee on the  
25 Judiciary and the Select Committee on Intel-

1           ligence of the Senate and the Committee on the  
2           Judiciary and the Permanent Select Committee  
3           on Intelligence of the House of Representatives  
4           a written notice of the intent to implement the  
5           authorization of such an acquisition, and any  
6           supporting materials in accordance with this  
7           subsection.

8           “(B) CONGRESSIONAL REVIEW PERIOD.—  
9           During the 30-day period beginning on the date  
10          written notice is submitted under subparagraph  
11          (A), the Committee on the Judiciary and the  
12          Select Committee on Intelligence of the Senate  
13          and the Committee on the Judiciary and the  
14          Permanent Select Committee on Intelligence of  
15          the House of Representatives shall, as appro-  
16          priate, hold hearings and briefings and other-  
17          wise obtain information in order to fully review  
18          the written notice.

19          “(C) LIMITATION ON ACTION DURING CON-  
20          GRESSIONAL REVIEW PERIOD.—Notwith-  
21          standing any other provision of law, and subject  
22          to paragraph (5), unless the Attorney General  
23          and the Director of National Intelligence make  
24          a determination pursuant to subsection (c)(2),  
25          the Attorney General and the Director of Na-

1           tional Intelligence may not implement the au-  
2           thorization of the intentional acquisition of  
3           abouts communications before the end of the  
4           period described in subparagraph (B).

5           “(D) EFFECT OF ENACTMENT OF DIS-  
6           APPROVAL.—If qualifying legislation is enacted  
7           during the 30-day period described in subpara-  
8           graph (B), the Attorney General and the Direc-  
9           tor of National Intelligence may not implement  
10          the authorization of the intentional acquisition  
11          of abouts communications.

12          “(E) EFFECT OF FAILURE TO ENACT DIS-  
13          APPROVAL.—If qualifying legislation is not en-  
14          acted during the 30-day period described in  
15          subparagraph (B), after the end of such period,  
16          the Attorney General and the Director of Na-  
17          tional Intelligence may implement the author-  
18          ization of the intentional acquisition of abouts  
19          communications.

20          “(3) WRITTEN NOTICE.—Written notice under  
21          paragraph (2)(A) shall include—

22                 “(A) a copy of any certification submitted  
23                 to the Foreign Intelligence Surveillance Court  
24                 pursuant to subsection (g), or amendment  
25                 thereto, authorizing the intentional acquisition

1 of abouts communications, including all affida-  
2 vits, procedures, exhibits, and attachments sub-  
3 mitted therewith;

4 “(B) any decision, order, or opinion of the  
5 Foreign Intelligence Surveillance Court con-  
6 cerning such certification, and any pleadings,  
7 applications, or memoranda of law associated  
8 with such decision, order, or opinion; and

9 “(C) a summary of the protections in place  
10 to detect any material breach;

11 “(D) data or other results of modeling,  
12 simulation, or auditing of sample data dem-  
13 onstrating that any acquisition method involv-  
14 ing the intentional acquisition of abouts com-  
15 munications shall be conducted in accordance  
16 with this title, if such data or other results exist  
17 at the time the written notice is submitted and  
18 were provided to the Foreign Intelligence Sur-  
19 veillance Court; and

20 “(E) except as provided under paragraph  
21 (5), a statement that no acquisition authorized  
22 under subsection (a) shall include the inten-  
23 tional acquisition of an abouts communication  
24 until after the end of the 30-day period de-  
25 scribed in paragraph (2)(B).

1           “(4) EXPEDITED CONSIDERATION OF LEGISLA-  
2           TION.—

3           “(A) INTRODUCTION.—It shall be in order  
4           in the Senate and the House of Representa-  
5           tives, not later than 30 days after the date on  
6           which written notice is submitted under para-  
7           graph (2)(A), or notice of an emergency author-  
8           ization is provided under paragraph (5), to in-  
9           troduce qualifying legislation, which shall be en-  
10          titled to expedited consideration under this  
11          paragraph.

12          “(B) CONSIDERATION IN THE HOUSE OF  
13          REPRESENTATIVES.—

14          “(i) REPORTING AND DISCHARGE.—  
15          Any committee of the House of Represent-  
16          atives to which qualifying legislation is re-  
17          ferred shall report it to the House of Rep-  
18          resentatives not later than 10 legislative  
19          days after the date of the referral.

20          “(ii) PROCEEDING TO CONSIDER-  
21          ATION.—On and after the third legislative  
22          day after each committee to which quali-  
23          fying legislation has been referred reports  
24          it to the House of Representatives from its  
25          further consideration, it shall be in order



1 to move to proceed to consider the quali-  
2 fying legislation. The motion to proceed to  
3 consideration of the qualifying legislation  
4 shall not be debatable.

5 “(C) CONSIDERATION IN THE SENATE.—

6 “(i) REPORTING AND DISCHARGE.—  
7 Any committee of the Senate to which  
8 qualifying legislation is referred shall re-  
9 port it to the Senate not later than 10  
10 days on which the Senate is in session  
11 after the date of the referral.

12 “(ii) PROCEEDING TO CONSIDER-  
13 ATION.—Notwithstanding rule XXII of the  
14 Standing Rules of the Senate, it is in order  
15 at any time after the committee to which  
16 qualifying legislation is referred reports it  
17 to the Senate (even though a previous mo-  
18 tion to the same effect has been disagreed  
19 to) to move to proceed to the consideration  
20 of the qualifying legislation. The motion to  
21 proceed to consideration of the qualifying  
22 legislation shall not be debatable.

23 “(iii) CONSIDERATION.—

24 “(I) IN GENERAL.—If the Senate  
25 proceeds to the consideration of quali-

1            fying legislation, consideration of the  
2            qualifying legislation, and all amend-  
3            ments, debatable motions, and appeals  
4            in connection therewith, shall be lim-  
5            ited to not more than 10 hours, which  
6            shall be divided equally between the  
7            majority and minority leaders or their  
8            designees.

9            “(II) VOTE ON PASSAGE.—The  
10           vote on passage shall occur imme-  
11           diately following the conclusion of the  
12           consideration of the qualifying legisla-  
13           tion, and a single quorum call at the  
14           conclusion of the debate if requested  
15           in accordance with the rules of the  
16           Senate.

17           “(III) CONSIDERATION OF VETO  
18           MESSAGES.—Consideration in the  
19           Senate of any veto message with re-  
20           spect to qualifying legislation, includ-  
21           ing all debatable messages and ap-  
22           peals in connection therewith, shall be  
23           limited to 10 hours, to be equally di-  
24           vided between, and controlled by, the

1 majority leader and the minority lead-  
2 er or their designees.

3 “(5) EXCEPTION FOR EMERGENCY ACQUI-  
4 TION.—

5 “(A) NOTICE OF DETERMINATION.—If the  
6 Attorney General and the Director of National  
7 Intelligence make a determination pursuant to  
8 subsection (c)(2) with respect to the intentional  
9 acquisition of abouts communications, the At-  
10 torney General and the Director of National In-  
11 telligence shall notify the Committee on the Ju-  
12 diciary and the Select Committee on Intel-  
13 ligence of the Senate and the Committee on the  
14 Judiciary and the Permanent Select Committee  
15 on Intelligence of the House of Representatives  
16 as soon as practicable, but not later than 7  
17 days after the determination is made.

18 “(B) IMPLEMENTATION OR CONTINU-  
19 ATION.—

20 “(i) IN GENERAL.—If the Foreign In-  
21 telligence Surveillance Court approves a  
22 certification that authorizes the intentional  
23 acquisition of abouts communications be-  
24 fore the end of the 30-day period described  
25 in paragraph (2)(B) and qualifying legisla-

1           tion has not been enacted, the Attorney  
2           General and the Director of National Intel-  
3           ligence may authorize the immediate imple-  
4           mentation or continuation of that certifi-  
5           cation if the Attorney General and the Di-  
6           rector of National Intelligence jointly de-  
7           termine that exigent circumstances exist  
8           such that without such immediate imple-  
9           mentation or continuation intelligence im-  
10          portant to the national security of the  
11          United States may be lost or not timely ac-  
12          quired.

13                 “(ii) NOTICE.—The Attorney General  
14           and Director of National Intelligence shall  
15           submit to the Committee on the Judiciary  
16           and the Select Committee on Intelligence  
17           of the Senate and the Committee on the  
18           Judiciary and the Permanent Select Com-  
19           mittee on Intelligence of the House of Rep-  
20           resentatives notification of a determination  
21           pursuant to clause (i) as soon as prac-  
22           ticable, but not later than 3 days after the  
23           determination is made.

24                 “(6) REPORTING OF MATERIAL BREACH.—The  
25          head of any agency involved in the acquisition of

1       abouts communications shall fully and concurrently  
2       inform the Committee on the Judiciary and the Se-  
3       lect Committee on Intelligence of the Senate and the  
4       Committee on the Judiciary and the Permanent Se-  
5       lect Committee on Intelligence of the House of Rep-  
6       resentatives of a material breach.”.

7       **SEC. 4. APPOINTMENT OF AMICUS CURIAE.**

8       (a) **IN GENERAL.**—Section 103(i)(2) of the Foreign  
9       Intelligence Surveillance Act of 1978 (50 U.S.C.  
10       1803(i)(2)) is amended—

11               (1) by redesignating subparagraphs (A) and  
12               (B) as clauses (i) and (ii), respectively, and adjust-  
13               ing the margin accordingly;

14               (2) by striking “A court established” and in-  
15               serting the following:

16                       “(A) **IN GENERAL.**—A court established”;  
17               and

18               (3) by adding at the end the following:

19                       “(B) **PRESUMPTION IN SECTION 702 CER-**  
20               **TIFICATIONS.**—For purposes of subparagraph  
21               (A)(i), the first certification under section  
22               702(g) or amendment thereto that authorizes  
23               the acquisition of communications that contain  
24               a reference to, but are not to or from, a facility,  
25               place, premises, or property at which an acqui-

1           sition authorized under section 702(a) is di-  
2           rected or conducted, presents a novel or signifi-  
3           cant interpretation of the law, unless the court  
4           determines otherwise.”.

5           (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—  
6 Section 103(i) of the Foreign Intelligence Surveillance Act  
7 of 1978 (50 U.S.C. 1803(i)) is amended—

8           (1) in paragraph (4), in the matter preceding  
9           subparagraph (A), by striking “paragraph (2)(A)”  
10          and inserting “paragraph (2)(A)(i)”; and

11          (2) in paragraph (5), by striking “paragraph  
12          (2)(A)” and inserting “paragraph (2)(A)(i)”.

13 **SEC. 5. MINIMIZATION AND DISCLOSURE PROVISIONS.**

14          (a) **END USE RESTRICTION.**—Section 706(a) of the  
15 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
16 1881e(a)) is amended—

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

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

20          (2) by adding at the end the following:

21                 “(2) **UNITED STATES PERSONS.**—

22                         “(A) **IN GENERAL.**—Any communication  
23                         to, from, or which contains a reference to a  
24                         United States person acquired under section  
25                         702 shall not be used in evidence against that

1 United States person in any criminal pro-  
2 ceeding unless the Attorney General determines  
3 that—

4 “(i) the criminal proceeding affects,  
5 involves, or is related to the national secu-  
6 rity of the United States; or

7 “(ii) the criminal proceeding in-  
8 volves—

9 “(I) death;

10 “(II) kidnapping;

11 “(III) serious bodily injury, as  
12 defined in section 1365 of title 18,  
13 United States Code;

14 “(IV) conduct that constitutes a  
15 criminal offense that is a specified of-  
16 fense against a minor, as defined in  
17 section 111 of the Adam Walsh Child  
18 Protection and Safety Act of 2006  
19 (34 U.S.C. 20911);

20 “(V) incapacitation or destruc-  
21 tion of critical infrastructure, as de-  
22 fined in section 1016 of the USA PA-  
23 TRIOT Act (42 U.S.C. 5195c);

24 “(VI) cybersecurity, including  
25 conduct described in section 1016(e)

1 of the USA PATRIOT Act (42 U.S.C.  
2 5195c(e)) or section 1029, 1030, or  
3 2511 of title 18, United States Code;

4 “(VII) transnational crime, in-  
5 cluding transnational narcotics traf-  
6 ficking and transnational organized  
7 crime; or

8 “(VIII) human trafficking.

9 “(B) NO JUDICIAL REVIEW.—A determina-  
10 tion by the Attorney General under subpara-  
11 graph (A) is not subject to judicial review.”.

12 (b) INTELLIGENCE COMMUNITY DISCLOSURE PROVI-  
13 SION.—Section 603 of the Foreign Intelligence Surveil-  
14 lance Act of 1978 (50 U.S.C. 1873) is amended—

15 (1) in subsection (b)—

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

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

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

24 “(C) the number of targets of such orders  
25 who are known to be United States persons;”;



1 (B) in paragraph (2)—

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

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

7 “(A) the number of targets of such or-  
8 ders;”;

9 (iii) in subparagraph (B), as so redesi-  
10 gnated, by striking “and” at the end; and

11 (iv) by adding at the end the fol-  
12 lowing:

13 “(D) the number of instances in which the  
14 Federal Bureau of Investigation has received  
15 and reviewed the unminimized contents of elec-  
16 tronic communications or wire communications  
17 concerning a United States person obtained  
18 through acquisitions authorized under such sec-  
19 tion in response to a search term that was rea-  
20 sonably designed to find evidence of a crime  
21 that would not be considered foreign intel-  
22 ligence information; and

23 “(E) the number of instances in which the  
24 Federal Bureau of Investigation opened, under  
25 the Criminal Investigative Division or any suc-

1 cessor division, an investigation of a United  
2 States person (who is not considered a threat to  
3 national security) based wholly or in part on an  
4 acquisition authorized under such section;”;

5 (C) in paragraph (3)(A), by striking “or-  
6 ders; and” and inserting the following: “orders,  
7 including—

8 “(i) the number of targets of such or-  
9 ders who are known to not be United  
10 States persons; and

11 “(ii) the number of targets of such or-  
12 ders who are known to be United States  
13 persons; and”;

14 (D) by redesignating paragraphs (4), (5),  
15 and (6) as paragraphs (5), (6), and (7), respec-  
16 tively; and

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

19 “(4) the number of criminal proceedings in  
20 which the United States or a State or political sub-  
21 division thereof provided notice pursuant to sub-  
22 section (c) or (d) of section 106 (including with re-  
23 spect to information acquired from an acquisition  
24 conducted under section 702) or subsection (d) or  
25 (e) of section 305 of the intent of the government

1 to enter into evidence or otherwise use or disclose  
2 any information obtained or derived from electronic  
3 surveillance, physical search, or an acquisition con-  
4 ducted pursuant to this Act;” and

5 (2) in subsection (d)—

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

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

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

15 **SEC. 6. SECTION 705 EMERGENCY PROVISION.**

16 Section 705 of the Foreign Intelligence Surveillance  
17 Act of 1978 (50 U.S.C. 1881d) is amended by adding at  
18 the end the following:

19 “(c) EMERGENCY AUTHORIZATION.—If the Attorney  
20 General authorized the emergency employment of elec-  
21 tronic surveillance or a physical search pursuant to section  
22 105 or 304, the Attorney General may authorize, for the  
23 effective period of the emergency authorization and subse-  
24 quent order pursuant to section 105 or 304, without a  
25 separate order under section 703 or 704, the targeting of

1 the United States person that is the target for the purpose  
2 of acquiring foreign intelligence information while such  
3 United States person is reasonably believed to be located  
4 outside the United States.

5 “(d) USE OF INFORMATION.—If an application sub-  
6 mitted to the Court pursuant to section 104 or 303 is de-  
7 nied, or in any other case in which the acquisition is termi-  
8 nated and no order with respect to the target of the acqui-  
9 sition is issued under section 105 or 304, all information  
10 obtained or evidence derived from such acquisition shall  
11 be handled in accordance with section 704(d)(4).”.

12 **SEC. 7. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD**  
13 **REFORM.**

14 Section 552b(a)(1) of title 5, United States Code, is  
15 amended—

16 (1) by striking “term ‘agency’ means” and in-  
17 serting the following: “term ‘agency’—

18 “(A) means”;

19 (2) by inserting “and” after “the agency;”; and

20 (3) by adding at the end the following:

21 “(B) does not include the Privacy and Civil  
22 Liberties Oversight Board;”.