

WITHHOLD

Exemption 5

[DISCUSSION DRAFT]

110TH CONGRESS
1ST SESSION

H. R. _____

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Responsible Electronic Surveillance That is Overseen,
6 Reviewed, and Effective Act of 2007” or “RESTORE Act
7 of 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of electronic surveillance of persons outside the United States.
- Sec. 3. Procedure for authorizing acquisitions of communications of persons located outside the United States.
- Sec. 4. Emergency authorization of acquisitions of communications of persons located outside the United States.
- Sec. 5. Oversight of acquisitions of communications of persons located outside of the United States.
- Sec. 6. Foreign Intelligence Surveillance Court en banc.
- Sec. 7. Audit of warrantless surveillance programs.
- Sec. 8. Database on acquisition of communications of United States persons without a court order.
- Sec. 9. Authorization for increased resources relating to foreign intelligence surveillance.
- Sec. 10. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
- Sec. 11. Technical and conforming amendments.
- Sec. 12. Sunset; transition procedures.

3 **SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE**
4 **OF PERSONS OUTSIDE THE UNITED STATES.**

5 Section 105A of the Foreign Intelligence Surveillance
6 Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read
7 as follows:

8 “CLARIFICATION OF ELECTRONIC SURVEILLANCE OF
9 PERSONS OUTSIDE THE UNITED STATES

10 “SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICA-
11 TIONS.—Notwithstanding any other provision of this Act,
12 a court order is not required for the acquisition of the
13 contents of any communication between persons that are
14 not located within the United States for the purpose of
15 collecting foreign intelligence information (as defined in
16 paragraph (1) or (2)(A) of section 101(e)), without re-

1 spect to whether the communication passes through the
2 United States or the surveillance device is located within
3 the United States.

4 “(b) COMMUNICATIONS OF PERSONS OUTSIDE OF
5 THE UNITED STATES.—Notwithstanding any other provi-
6 sion of this Act, electronic surveillance that is directed at
7 the acquisition of the communications of a person reason-
8 ably believed to be outside the United States for the pur-
9 pose of collecting foreign intelligence information (as de-
10 fined in paragraph (1) or (2)(A) of section 101(e)) by tar-
11 geting that person shall be conducted pursuant to—

12 “(1) an order approved in accordance with sec-
13 tion 105 or 105B; or

14 “(2) an emergency authorization in accordance
15 with section 105C.”

16 **SEC. 3. PROCEDURE FOR AUTHORIZING ACQUISITIONS OF**
17 **COMMUNICATIONS OF PERSONS LOCATED**
18 **OUTSIDE THE UNITED STATES.**

19 Section 105B of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read
21 as follows:

22 “PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COM-
23 MUNICATIONS OF PERSONS LOCATED OUTSIDE THE
24 UNITED STATES

25 “SEC. 105B. (a) IN GENERAL.—Notwithstanding
26 any other provision of this Act, the Director of National

1 Intelligence and the Attorney General may jointly apply
2 to a judge of the court established under section 103(a)
3 for an ex parte order, or the extension of an order, author-
4 izing for a period of up to one year the acquisition of com-
5 munications of persons reasonably believed to be outside
6 the United States for the purpose of collecting foreign in-
7 telligence information (as defined in paragraph (1) or
8 (2)(A) of section 101(e)) by targeting those persons.

9 “(b) APPLICATION INCLUSIONS.—An application
10 under subsection (a) shall include—

11 “(1) a certification by the Director of National
12 Intelligence and the Attorney General that—

13 “(A) the targets of the acquisition of for-
14 eign intelligence information under this section
15 are persons reasonably believed to be located
16 outside the United States;

17 “(B) the targets of the acquisition are not
18 known United States persons;

19 “(C) the acquisition involves obtaining the
20 foreign intelligence information from, or with
21 the assistance of, a communications service pro-
22 vider or custodian, or an officer, employee, or
23 agent of such service provider or custodian, who
24 has authorized access to the communications to
25 be acquired, either as they are transmitted or

1 while they are stored, or equipment that is
2 being or may be used to transmit or store such
3 communications; and

4 “(D) a significant purpose of the acqui-
5 sition is to obtain foreign intelligence information
6 (as defined in paragraph (1) or (2)(A) of sec-
7 tion 101(e)); and

8 “(2) a description of—

9 “(A) the procedures that will be used by
10 the Director of National Intelligence and the
11 Attorney General during the duration of the
12 order to determine that there is a reasonable
13 belief that the targets of the acquisition are
14 persons outside the United States;

15 “(B) the nature of the information sought,
16 including the identity of any foreign power
17 against whom the acquisition will be directed;

18 “(C) minimization procedures that meet
19 the definition of minimization procedures under
20 section 101(h) to be used with respect to such
21 acquisition; and

22 “(D) the guidelines that will be used to en-
23 sure that an application is filed under section
24 104, if otherwise required by this Act, when the
25 Federal Government seeks to conduct electronic

1 surveillance of a person reasonably believed to
2 be located in the United States.

3 “(c) SPECIFIC PLACE NOT REQUIRED.—An applica-
4 tion under subsection (a) is not required to identify the
5 specific facilities, places, premises, or property at which
6 the acquisition of foreign intelligence information will be
7 directed.

8 “(d) REVIEW OF APPLICATION.—Not later than 15
9 days after a judge receives an application under subsection
10 (a), the judge shall review such application and shall ap-
11 prove the application if the judge finds that—

12 “(1) the proposed procedures referred to in sub-
13 section (b)(2)(A) are reasonably designed to deter-
14 mine whether the targets of the acquisition are out-
15 side the United States;

16 “(2) the proposed minimization procedures re-
17 ferred to in subsection (b)(2)(C) meet the definition
18 of minimization procedures under section 101(h);
19 and

20 “(3) the guidelines referred to in subsection
21 (b)(2)(D) are reasonably designed to ensure that an
22 application is filed under section 104, if otherwise
23 required by this Act, when the Federal Government
24 seeks to conduct electronic surveillance of a person

1 reasonably believed to be located in the United
2 States.

3 “(e) ORDER.—

4 “(1) IN GENERAL.—A judge approving an ap-
5 plication under subsection (d) shall issue an order—

6 “(A) authorizing the acquisition of the con-
7 tents of the communications as requested, or as
8 modified by the judge;

9 “(B) requiring the communications service
10 provider or custodian, or officer, employee, or
11 agent of such service provider or custodian, who
12 has authorized access to the information, facili-
13 ties, or technical assistance necessary to accom-
14 plish the acquisition to provide such informa-
15 tion, facilities, or technical assistance necessary
16 to accomplish the acquisition and to produce a
17 minimum of interference with the services that
18 provider, custodian, officer, employee, or agent
19 is providing the target of the acquisition;

20 “(C) requiring such communications serv-
21 ice provider, custodian, officer, employee, or
22 agent, upon the request of the applicant, to
23 maintain under security procedures approved by
24 the Attorney General and the Director of Na-

1 tional Intelligence any records concerning the
2 acquisition or the aid furnished;

3 “(D) directing the Federal Government
4 to—

5 “(i) compensate, at the prevailing
6 rate, a person for providing information,
7 facilities, or assistance pursuant to such
8 order; and

9 “(ii) provide a copy of the portion of
10 the order directing the person to comply
11 with the order to such person; and

12 “(E) directing the applicant to follow—

13 “(i) the procedures referred to in sub-
14 section (b)(2)(A) as proposed or as modi-
15 fied by the judge;

16 “(ii) the minimization procedures re-
17 ferred to in subsection (b)(2)(C) as pro-
18 posed or as modified by the judge; and

19 “(iii) the guidelines referred to in sub-
20 section (b)(2)(D) as proposed or as modi-
21 fied by the judge.

22 “(2) FAILURE TO COMPLY.—If a person fails to
23 comply with an order issued under paragraph (1),
24 the Attorney General may invoke the aid of the
25 court established under section 103(a) to compel

1 compliance with the order. Failure to obey an order
2 of the court may be punished by the court as con-
3 tempt of court. Any process under this section may
4 be served in any judicial district in which the person
5 may be found.

6 “(3) LIABILITY OF ORDER.—Notwithstanding
7 any other law, no cause of action shall lie in any
8 court against any person for providing any informa-
9 tion, facilities, or assistance in accordance with an
10 order issued under this subsection.

11 “(4) RETENTION OF ORDER.—The Director of
12 National Intelligence and the court established
13 under subsection 103(a) shall retain an order issued
14 under this section for a period of not less than 10
15 years from the date on which such order is issued.

16 “(5) ASSESSMENT OF COMPLIANCE WITH MINI-
17 MIZATION PROCEDURES.—At or before the end of
18 the period of time for which an acquisition is ap-
19 proved by an order or an extension under this sec-
20 tion, the judge may assess compliance with the mini-
21 mization procedures referred to in paragraph
22 (1)(E)(ii) and the guidelines referred to in para-
23 graph (1)(E)(iii) by reviewing the circumstances
24 under which information concerning United States
25 persons was acquired, retained, or disseminated.”.

1 **SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF**
2 **COMMUNICATIONS OF PERSONS LOCATED**
3 **OUTSIDE THE UNITED STATES.**

4 Section 105C of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read
6 as follows:

7 “EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COM-
8 MUNICATIONS OF PERSONS LOCATED OUTSIDE THE
9 UNITED STATES

10 “SEC. 105C. (a) APPLICATION AFTER EMERGENCY
11 AUTHORIZATION.—As soon as is practicable, but not more
12 than 7 days after the Director of National Intelligence and
13 the Attorney General authorize an acquisition under this
14 section, an application for an order authorizing the acqui-
15 sition in accordance with section 105B shall be submitted
16 to the judge referred to in subsection (b)(2) of this section
17 for approval of the acquisition in accordance with section
18 105B.

19 “(b) EMERGENCY AUTHORIZATION.—Notwith-
20 standing any other provision of this Act, the Director of
21 National Intelligence and the Attorney General may joint-
22 ly authorize the emergency acquisition of foreign intel-
23 ligence information for a period of not more than 45 days
24 if—

25 “(1) the Director of National Intelligence and
26 the Attorney General jointly determine that—

1 “(A) an emergency situation exists with re-
2 spect to an authorization for an acquisition
3 under section 105B before an order approving
4 the acquisition under such section can with due
5 diligence be obtained;

6 “(B) the targets of the acquisition of for-
7 eign intelligence information under this section
8 are persons reasonably believed to be located
9 outside the United States;

10 “(C) there are reasonable procedures in
11 place for determining that the acquisition of
12 foreign intelligence information under this sec-
13 tion will be acquired by targeting only persons
14 reasonably believed to be located outside the
15 United States;

16 “(D) the targets of the acquisition are not
17 known United States persons;

18 “(E) the acquisition involves obtaining the
19 foreign intelligence information from, or with
20 the assistance of, a communications service pro-
21 vider or custodian, or an officer, employee, or
22 agent of such service provider or custodian, who
23 has authorized access to the communications to
24 be acquired, either as they are transmitted or
25 while they are stored, or equipment that is

1 being or may be used to transmit or store such
2 communications;

3 “(F) a significant purpose of the acquisi-
4 tion is to obtain foreign intelligence information
5 (as defined in paragraph (1) or (2)(A) of sec-
6 tion 101(e));

7 “(G) minimization procedures to be used
8 with respect to such acquisition activity meet
9 the definition of minimization procedures under
10 section 101(h); and

11 “(H) there are guidelines that will be used
12 to ensure that an application is filed under sec-
13 tion 104, if otherwise required by this Act,
14 when the Federal Government seeks to conduct
15 electronic surveillance of a person reasonably
16 believed to be located in the United States; and

17 “(2) the Director of National Intelligence and
18 the Attorney General, or their designees, inform a
19 judge having jurisdiction to approve an acquisition
20 under section 105B at the time of the authorization
21 under this section that the decision has been made
22 to acquire foreign intelligence information.

23 “(c) INFORMATION, FACILITIES, AND TECHNICAL
24 ASSISTANCE.—Pursuant to an authorization of an acquisi-
25 tion under this section, the Attorney General may direct

1 a communications service provider, custodian, or an offi-
2 cer, employee, or agent of such service provider or custo-
3 dian, who has the lawful authority to access the informa-
4 tion, facilities, or technical assistance necessary to accom-
5 plish such acquisition to—

6 “(1) furnish the Attorney General forthwith
7 with such information, facilities, or technical assist-
8 ance in a manner that will protect the secrecy of the
9 acquisition and produce a minimum of interference
10 with the services that provider, custodian, officer,
11 employee, or agent is providing the target of the ac-
12 quisition; and

13 “(2) maintain under security procedures ap-
14 proved by the Attorney General and the Director of
15 National Intelligence any records concerning the ac-
16 quisition or the aid furnished.”.

17 **SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICA-**
18 **TIONS OF PERSONS LOCATED OUTSIDE OF**
19 **THE UNITED STATES.**

20 The Foreign Intelligence Surveillance Act of 1978
21 (50 U.S.C. 1801 et seq.) is amended by inserting after
22 section 105C the following new section:

23 “OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF
24 PERSONS LOCATED OUTSIDE OF THE UNITED STATES

25 “SEC. 105D. (a) APPLICATION; PROCEDURES; OR-
26 DERS.—Not later than 7 days after an application is sub-

1 mitted under section 105B(a) or an order is issued under
2 section 105B(e), the Director of National Intelligence and
3 the Attorney General shall submit to the appropriate com-
4 mittees of Congress—

5 “(1) in the case of an application, a copy of the
6 application, including the certification made under
7 section 105B(b)(1); and

8 “(2) in the case of an order, a copy of the
9 order, including the procedures and guidelines re-
10 ferred to in section 105B(e)(1)(E).

11 “(b) QUARTERLY AUDITS.—

12 “(1) AUDIT.—Not later than 120 days after the
13 date of the enactment of this section, and every 120
14 days thereafter until the expiration of all orders
15 issued under section 105B, the Inspector General of
16 the Department of Justice shall complete an audit
17 on the implementation of and compliance with the
18 procedures and guidelines referred to in section
19 105B(e)(1)(E) and shall submit to the appropriate
20 committees of Congress, the Attorney General, the
21 Director of National Intelligence, and the court es-
22 tablished under section 103(a) the results of such
23 audit, including, for each order authorizing the ac-
24 quisition of foreign intelligence under section
25 105B—

1 “(A) the number of targets of an acquisi-
2 tion under section 105B that were later deter-
3 mined to be located in the United States;

4 “(B) the number of persons located in the
5 United States whose communications have been
6 acquired under section 105B;

7 “(C) the number of reports disseminated
8 containing information on a United States per-
9 son that was collected under section 105B; and

10 “(D) the number of applications submitted
11 for approval of electronic surveillance under
12 section 104 based upon information collected
13 pursuant to acquisition authorized under sec-
14 tion 105B.

15 “(2) REPORT.—Not later than 30 days after
16 the completion of an audit under paragraph (1), the
17 Attorney General shall submit to the appropriate
18 committees of Congress and the court established
19 under section 103(a) a report containing the results
20 of such audit.

21 “(c) COMPLIANCE REPORTS.—Not later than 60 days
22 after the date of the enactment of this section, and every
23 120 days thereafter until the expiration of all orders
24 issued under section 105B, the Director of National Intel-
25 ligence and the Attorney General shall submit to the ap-

1 appropriate committees of Congress and the court estab-
2 lished under section 103(a) a report concerning acquisi-
3 tions under section 105B during the previous 120-day pe-
4 riod. Each report submitted under this section shall in-
5 clude a description of any incidents of non-compliance
6 with an order issued under section 105B(e), including inci-
7 dents of non-compliance by—

8 “(1) an element of the intelligence community
9 with minimization procedures referred to in section
10 105B(e)(1)(E)(i);

11 “(2) an element of the intelligence community
12 with procedures referred to in section
13 105B(e)(1)(E)(ii);

14 “(3) an element of the intelligence community
15 with guidelines referred to in section
16 105B(e)(1)(E)(iii); and

17 “(4) a person directed to provide information,
18 facilities, or technical assistance under such order.

19 “(d) REPORT ON EMERGENCY AUTHORITY.—The Di-
20 rector of National Intelligence and the Attorney General
21 shall annually submit to the appropriate committees a
22 Congress a report containing the number of emergency au-
23 thorizations of acquisitions under section 105C and a de-
24 scription of any incidents of non-compliance with an emer-
25 gency authorization under such section.

1 “(e) APPROPRIATE COMMITTEES OF CONGRESS DE-
2 FINED.—In this section, the term ‘appropriate committees
3 of Congress’ means—

4 “(1) the Permanent Select Committee on Intel-
5 ligence of the House of Representatives;

6 “(2) the Select Committee on Intelligence of the
7 Senate; and

8 “(3) the Committees on the Judiciary of the
9 House of Representatives and the Senate.”.

10 **SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN**
11 **BANC.**

12 Section 103 of the Foreign Intelligence Surveillance
13 Act of 1978 (50 U.S.C. 1803) is amended by adding at
14 the end the following new subsection:

15 “(g) In any case where the court established under
16 subsection (a) or a judge of such court is required to re-
17 view a matter under this Act, the court may, at the discre-
18 tion of the court, sit en banc to review such matter and
19 issue any orders related to such matter.”.

20 **SEC. 7. AUDIT OF WARRANTLESS SURVEILLANCE PRO-**
21 **GRAMS.**

22 (a) AUDIT.—Not later than 180 days after the date
23 of the enactment of this Act, the Inspector General of the
24 Department of Justice shall complete an audit of all pro-
25 grams of electronic surveillance (as defined in section

1 101(f) of the Foreign Intelligence Surveillance Act of 1978
2 (50 U.S.C. 1801(f)) of the Federal Government con-
3 ducted without a court order on or after September 11,
4 2001, including the Terrorist Surveillance Program re-
5 ferred to by the President in a radio address on December
6 17, 2005. Such audit shall include acquiring all documents
7 relevant to such programs, including memoranda con-
8 cerning the legal authority of a program, authorizations
9 of a program, certifications to telecommunications car-
10 riers, and court orders.

11 (b) REPORT.—

12 (1) IN GENERAL.—Not later than 30 days after
13 the completion of the audit under subsection (a), the
14 Inspector General shall submit to the Permanent Se-
15 lect Committee on Intelligence and the Committee
16 on the Judiciary of the House of Representatives
17 and the Select Committee on Intelligence and the
18 Committee on the Judiciary of the Senate a report
19 containing the results of such audit, including all
20 documents acquired pursuant to conducting such
21 audit.

22 (2) FORM.—The report under paragraph (1)
23 shall be submitted in unclassified form, but may in-
24 clude a classified annex.

1 (c) EXPEDITED SECURITY CLEARANCE.—The Direc-
2 tor of National Intelligence shall ensure that the process
3 for the investigation and adjudication of an application by
4 the Inspector General or the appropriate staff of the Of-
5 fice of the Inspector General of the Department of Justice
6 for a security clearance necessary for the conduct of the
7 audit under subsection (a) is conducted as expeditiously
8 as possible.

9 **SEC. 8. DATABASE ON ACQUISITION OF COMMUNICATIONS**
10 **OF UNITED STATES PERSONS WITHOUT A**
11 **COURT ORDER.**

12 (a) DATABASE.—The Director of National Intel-
13 ligence and the Attorney General shall jointly develop and
14 maintain a record-keeping system that will keep track of—

15 (1) the instances where the identity of a United
16 States person whose communications were acquired
17 without a court order was disclosed by an element
18 of the intelligence community (as defined in section
19 3(4) of the National Security Act of 1947 (50
20 U.S.C. 401a(4)) that collected the communications
21 to other departments or agencies of the United
22 States; and

23 (2) the persons to whom such identity informa-
24 tion was disclosed.

1 (b) REPORT.—The Director of National Intelligence
2 and the Attorney General shall annually submit to the
3 Permanent Select Committee on Intelligence and the Com-
4 mittee on the Judiciary of the House of Representatives
5 and the Select Committee on Intelligence and the Com-
6 mittee on the Judiciary of the Senate a report on the data-
7 base created under subsection (a), including the number
8 of instances referred to in paragraph (1).

9 **SEC. 9. AUTHORIZATION FOR INCREASED RESOURCES RE-**
10 **LATING TO FOREIGN INTELLIGENCE SUR-**
11 **VEILLANCE.**

12 There are authorized to be appropriated the Depart-
13 ment of Justice, for the activities of the Office of the In-
14 spector General, the Office of Intelligence Policy and Re-
15 view, and other appropriate elements of the National Secu-
16 rity Division, and the National Security Agency such sums
17 as may be necessary to meet the personnel and informa-
18 tion technology demands to ensure the timely and efficient
19 processing of—

20 (1) applications and other submissions to the
21 court established under section 103(a) of the For-
22 eign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1803(a));

24 (2) the audit and reporting requirements
25 under—

1 (A) section 105D of such Act; and

2 (B) section 7; and

3 (3) the database and reporting requirements
4 under section 8.

5 **SEC. 10. REITERATION OF FISA AS THE EXCLUSIVE MEANS**
6 **BY WHICH ELECTRONIC SURVEILLANCE MAY**
7 **BE CONDUCTED FOR GATHERING FOREIGN**
8 **INTELLIGENCE INFORMATION.**

9 (a) **EXCLUSIVE MEANS.**—Notwithstanding any other
10 provision of law, the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive
12 means by which electronic surveillance may be conducted
13 for the purpose of gathering foreign intelligence informa-
14 tion.

15 (b) **SPECIFIC AUTHORIZATION REQUIRED FOR EX-**
16 **CEPTION.**—Subsection (a) shall apply until specific statu-
17 tory authorization for electronic surveillance, other than
18 as an amendment to the Foreign Intelligence Surveillance
19 Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such
20 specific statutory authorization shall be the only exception
21 to subsection (a).

22 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

23 (a) **TABLE OF CONTENTS.**—The table of contents in
24 the first section of the Foreign Intelligence Surveillance
25 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by strik-

1 ing the items relating to sections 105A, 105B, and 105C
2 and inserting the following new items:

“Sec. 105A. Clarification of electronic surveillance of persons outside the United States.

“Sec. 105B. Procedure for authorizing acquisitions of communications of persons located outside the United States.

“Sec. 105C. Emergency authorization of acquisitions of communications of persons located outside the United States.

“Sec. 105D. Oversight of acquisitions of communications of persons located outside of the United States.”.

3 (b) SECTION 103(e) OF FISA.—Section 103(e) of the
4 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
5 1803(e)) is amended—

6 (1) in paragraph (1), by striking “105B(h) or”;
7 and

8 (2) in paragraph (2), by striking “105B(h) or”.

9 (c) REPEAL OF CERTAIN PROVISIONS OF THE PRO-
10 TECT AMERICA ACT.—Sections 4 and 6 of the Protect
11 America Act (Public Law 110-55) are hereby repealed.

12 **SEC. 12. SUNSET; TRANSITION PROCEDURES.**

13 (a) SUNSET OF NEW PROVISIONS.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), effective on December 31, 2009—

16 (A) sections 105A, 105B, 105C, and 105D
17 of the Foreign Intelligence Surveillance Act of
18 1978 (50 U.S.C. 1801 et seq.) are hereby re-
19 pealed; and

20 (B) the table of contents in the first sec-
21 tion of such Act is amended by striking the

1 items relating to sections 105A, 105B, 105C,
2 and 105D.

3 (2) ACQUISITIONS AUTHORIZED PRIOR TO SUN-
4 SET.—Any authorization or order issued under sec-
5 tion 105B of the Foreign Intelligence Surveillance
6 Act of 1978, as amended by this Act, in effect on
7 December 31, 2009, shall continue in effect until the
8 date of the expiration of such authorization or order.

9 (b) ACQUISITIONS AUTHORIZED PRIOR TO ENACT-
10 MENT.—

11 (1) EFFECT.—Notwithstanding the amend-
12 ments made by this Act, an authorization of the ac-
13 quisition of foreign intelligence information under
14 section 105B of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1801 et seq.) made before
16 the date of the enactment of this Act shall remain
17 in effect until the date of the expiration of such au-
18 thorization or the date that is 180 days after such
19 date of enactment, whichever is earlier.

20 (2) REPORT.—Not later than 30 days after the
21 date of the expiration of all authorizations of acqui-
22 sition of foreign intelligence information under sec-
23 tion 105B of the Foreign Intelligence Surveillance
24 Act of 1978 (as added by Public Law 110-55) made
25 before the date of the enactment of this Act in ac-

1 cordance with paragraph (1), the Director of Na-
2 tional Intelligence and the Attorney General shall
3 submit to the Permanent Select Committee on Intel-
4 ligence and the Committee on the Judiciary of the
5 House of Representatives and the Select Committee
6 on Intelligence and the Committee on the Judiciary
7 of the Senate a report on such authorizations, in-
8 cluding—

9 (A) the number of targets of an acquisition
10 under section 105B of such Act (as in effect on
11 the day before the date of the enactment of this
12 Act) that were later determined to be located in
13 the United States;

14 (B) the number of persons located in the
15 United States whose communications have been
16 acquired under such section;

17 (C) the number of reports disseminated
18 containing information on a United States per-
19 son that was collected under such section;

20 (D) the number of applications submitted
21 for approval of electronic surveillance under
22 section 104 of such Act based upon information
23 collected pursuant to an acquisition authorized
24 under section 105B of such Act (as in effect on

1 the day before the date of the enactment of this
2 Act); and

3 (E) a description of any incidents of non-
4 compliance with an authorization under such
5 section, including incidents of non-compliance
6 by—

7 (i) an element of the intelligence com-
8 munity with procedures referred to in sub-
9 section (a)(1) of such section;

10 (ii) an element of the intelligence com-
11 munity with minimization procedures re-
12 ferred to in subsection (a)(5) of such sec-
13 tion; and

14 (iii) a person directed to provide infor-
15 mation, facilities, or technical assistance
16 under subsection (e) of such section.

17 (3) INTELLIGENCE COMMUNITY DEFINED.—In
18 this subsection, the term “intelligence community”
19 has the meaning given the term in section 3(4) of
20 the National Security Act of 1947 (50 U.S.C.
21 401a(4)).