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Senate Votes To Turn NSA Spying Back On, But With Reforms

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After allowing portions of the Patriot Act to expire early Monday, lawmakers voted on Tuesday to reinstate the National Security Agency's sweeping data collection programs, though with modest reforms to the agency's programs and the secret court charged with keeping it in check.

In a 67-32 vote -- called earlier than expected -- the upper chamber agreed to pass the USA Freedom Act, effectively ending the [two-day lapse](#) in the NSA's programs. President Barack Obama signed it into law Tuesday night. The act re-establishes modified versions of the expired Patriot Act provisions.

Attempts by NSA defenders to weaken the reforms in the USA Freedom Act fell short in the Senate, where the debate over the legislation has led to weeks of political turmoil. Senate Majority Leader Mitch McConnell (R-Ky.) and Senate Intelligence Committee Chair Richard Burr (R-N.C.) put forth a handful of amendments that would have watered down the changes to the Patriot Act provisions. However, those measures failed to pass, largely due to concern that the House, which passed an clean bill earlier this month by a vote of 338-88, would refuse to approve an amended act.

The House bill was drafted by Rep. Jim Sensenbrenner (R-Wis.), one of the original authors of the Patriot Act in 2001. He has [since criticized the government's broad interpretation](#) of the Patriot Act as a warrant for collecting bulk information on Americans.

Central to this week's political drama was the NSA's bulk domestic metadata collection program, which used secret court orders to obtain information from third-party companies about the communications of Americans. That program, first revealed by NSA contractor-turned-whistleblower Edward Snowden in 2013, has been slammed by privacy and civil liberties advocates for violating the constitutional rights of U.S. citizens.

While the NSA may have been able to turn its bulk data collection program back on for the moment, its foundation has been shaken with the passage of the USA Freedom Act. When it goes into effect, the law will require that telecommunications companies -- not the government -- hold

onto the data stores. The act provides a 180-day window to make that transition, which will effectively end the current program.

Additionally, the bill mandates more transparency from the secret [Foreign Intelligence Surveillance Court](#), which is in charge of authorizing the government's use of the program. The court will be required to declassify more of its fiercely guarded opinions, and to do so sooner than currently required. In an effort to make the court's process more balanced, the legislation also allows the judges to appoint a "friend of court" to argue on behalf of privacy concerns.

The expiration of parts of the Patriot Act early Monday morning was the result of procedural maneuvering by both defenders and critics of the NSA's spying programs. McConnell, loath to see the agency's powers weakened, delayed a vote on the House-passed bill until the final hours before the Patriot Act was set to lapse -- banking on the expectation that skeptical lawmakers would cave and support an extension of the existing surveillance law.

Sen. Rand Paul (R-Ky.), however, called his colleague's bluff by blocking votes on short-term extensions, including an attempt to extend the expiring Patriot Act provisions by one day. Obama administration officials and Paul's Senate colleagues have equated the senator's actions to playing "Russian roulette" with national security. Paul has established himself as a vocal opponent of the bulk metadata collection program.

That program, along with three other counterterrorism tools used by the NSA and FBI, expired at 12:01 a.m. Monday. Along with the bulk program run under Section 215 of the Patriot Act, the government's ability to use that section to obtain individual court orders lapsed as well.

Also expired was the Patriot Act's roving wiretap provision -- a way of tracking multiple devices using just one court order -- and the never-used "lone wolf" provision, which allows the government to track individuals unaffiliated with a specific terror group.

Senior administration officials said last week that it will take about a day to get the programs back up and running once the USA Freedom Act is signed into law.

Despite days of fearmongering from administration officials, the intelligence community has still been able to make use of at least some of the programs since the expiration. The Patriot Act's Section 224, its grandfather clause, allows active investigations that began prior to midnight on Monday to continue using the expired programs.

Though the White House said last week it would not continue the bulk collection program under that grandfather clause, it did not clarify whether it would continue using roving wiretaps. White House Press Secretary Josh Earnest confirmed Tuesday that the administration was still issuing regular orders under the expired Section 215 of the Patriot Act.

Senators hailed Tuesday's passage of the USA Freedom Act as an important step toward reform.

"We passed the most significant surveillance reform in decades," Sen. Patrick Leahy (D-Vt.), ranking member of the Senate Judiciary Committee, declared triumphantly after the final vote.

“We’ve done it by setting aside ideology, setting aside fear mongering, and saying we’ll protect the security of the United States, but we’ll also protect the privacy of Americans.” Leahy has previously authored several similar versions of the bill that passed Tuesday.

"I think Ben Franklin would've been proud of this outcome," said Sen. Martin Heinrich (D-N.M.), an Intelligence Committee member and co-sponsor of the USA Freedom Act. "I think our framers really understood the importance of this underlying tension ... they understood the dynamic of protecting security and liberty at the same time. Today we struck a blow for finding that balance that will truly accomplish both of those things."

However, some lawmakers warned that the bill doesn't do enough to end what they believe is the intelligence community's overreach on surveillance.

"I voted against this bill because it doesn't take action on the warrantless search loophole and still allows for government overreach, abuses and infringement on the freedoms guaranteed by our constitution," said Sen. Tammy Baldwin (D-Wis.) in a statement. Baldwin is the only Senate Democrat who voted against the bill.

In the House, criticism of the bill's limited reform was more widespread.

“Some of us don’t think USA Freedom sufficiently ends bulk metadata collection. In fact, [the government] will still contend after the act passes that they can bulk collect all of the websites and emails and all that content,” said Rep. Thomas Massie (R-Ky.). “Read it closely, it’s only about your phone calls.”

Massie is one of 60 congressmen who voted against the USA Freedom Act in the House, [claiming](#) that the bill had been unacceptably weakened from its original form and would preclude further surveillance reform.

Outside observers agree that it's unlikely that Congress will retain momentum for further reform, absent another pending deadline.

“The Foreign Surveillance Intelligence Act amendments of 2008 are up for renewal in December of 2017,” noted Patrick Eddington, a policy analyst at the Cato Institute and former House Intelligence Committee staffer. “Realistically, that’s the next bite at the apple surveillance reform advocates will have.”

In an earlier version of the USA Freedom Act, Massie offered an amendment that would have reformed Section 702 of the FISA Amendments of 2008, which has been used to authorize mass collection of email and phone records. Ultimately, House leadership blocked members from amending the bill, in an effort to ensure future support from the Senate and the Obama administration.

Meanwhile, NSA allies in the Senate failed Tuesday afternoon to tack their own amendments onto the act, many of which would have softened the reform blow for the NSA. But any efforts to water down the House-passed version of the bill would have gone back to the lower chamber,

and would likely have faced bipartisan opposition given that House members already viewed the bill as a compromise.

House Minority Whip Steny Hoyer (D-Md.) warned on Tuesday morning that the proposed changes to the Senate version of the bill were “unacceptable and will undermine the coalition that was created,” noting the overwhelming 338-88 vote in the House.

Senate Intelligence Committee ranking member Dianne Feinstein (D-Calif.), urged her colleagues not to test the lower chamber with further amendments. “It’s carefully balanced now,” she said of the House version of the bill. “I think national security interests of the United States is really best served if we get the program up and running with the House formula.”

After the vote, Feinstein acknowledged that she had some concerns about the bill, but believed that passing it was the right thing to do.

"The vote I cast today wasn't on the basis that this bill was perfect, but that this bill was the best opportunity to quickly get these programs back up and running," she said in a statement. "I believe we can make further changes to the program, but also think the Senate was right in preserving this program."