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NSA reform bill passes House, despite loss of support from privacy advocates

By Andrea Peterson

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The House passed a bill Thursday aimed at reforming the National Security Agency's bulk collection of phone records, a policy that came to light due to documents leaked by former NSA contractor Edward Snowden.

The bill, known as the USA Freedom Act, would shift responsibility for retaining telephonic metadata from the government to telephone companies. Providers like AT&T and Verizon would be required to maintain the records for 18 months and let the NSA search them in terrorism investigations when the agency obtains a judicial order or in certain emergency situations. The bill passed on an 303 to 121 vote.

But privacy advocates, technology companies and lawmakers warned that the version of the bill passed by the House was watered down to the point where they could no longer support it.

"This is not the bill that was reported out of the judiciary bill unanimously," said Rep. Zoe Lofgren (D-Calif.), a member of the House Judiciary Committee who was a co-sponsor of the initial version of the bill. "The result is a bill that will actually not end bulk collection, regrettably."

Lofgren said she was particularly concerned about the bill's definition of "selector terms," which are the terms that would be used by the NSA to define the scope of their data request to the phone companies.

The initial version of the bill included a more narrow definition, but some privacy advocates fear the definition in the Freedom Act passed Thursday could be used to collect broad swaths of information.

"If we leave any ambiguity at all, we have learned that the intelligence community will drive a truck through that ambiguity," she said. Others, including Rep. Mike Honda (D-Calif.) and Rep. Rush Holt (D-N.J.) also expressed their concern with the legislation. Holt specifically attacked the bill for using a "weak and inferior standard that does not meet probable cause" as the benchmark for judicial orders to search phone records.

On Wednesday, the White House endorsed the bill. "The bill ensures our intelligence and law enforcement professionals have the authorities they need to protect the Nation, while further ensuring that individuals' privacy is appropriately protected when these authorities are employed," an official statement of policy read. "Among other provisions, the bill prohibits bulk collection through the use of Section 215, FISA pen registers, and National Security Letters."

Rep. Jim Sensenbrenner (R-Wis.) was the primary sponsor of the bill and the author of the Patriot Act, legislation passed shortly after the Sept. 11, 2001, terrorist attacks. Section 215 of the Patriot Act was used as the legal basis of the NSA's phone records collection program. In a floor speech before the vote, Sensenbrenner said that the government misapplied that earlier legislation through a feat of "legal gymnastics."

"I don't blame people for losing trust in their government because the government betrayed their trust," he said.

Sensenbrenner urged his fellow members to support the bill, although he said wished the version of the bill voted on Thursday "did more."

"Don't let the perfect become the enemy of the good," he said.

Others were more enthusiastic in their support. "This is a carefully crafted, bipartisan bill," Judiciary Committee Chair Bob Goodlatte (R-Va.) said, adding that the bill "once again proves that American liberty and security are not mutually exclusive."

Rep. John Conyers (D-Mich.), the ranking Democrat on the House Judiciary Committee, tried to assuage concerns about the selector term, calling them "largely theoretical."

"We stand poised to end domestic bulk collection across the board," Conyers said while endorsing the bill before the vote. While Conyers admitted that the bill was "imperfect" he called it "a significant improvement over the status quo."

But in a [blog post](#), Kevin Bankston the policy director at the New America Foundation's Open Technology Institute identified a number of areas where he says the bill had been weakened, including limiting transparency reporting provisions for tech companies affected by government data requests and the selector term issue decried by Lofgren.

In a statement to The Washington Post after the bill's passage, Bankston said it was "still better than the Intelligence committee's competing bill, or no bill at all," but that privacy advocates would have to work hard in the Senate to reverse the changes that weakened the bill.

Julian Sanchez, a scholar at the Cato Institute working on these issues, says a lot will turn on how the secret Foreign Intelligence Surveillance Court interprets phrases like "specific selection term."

"Unfortunately nobody has much expectation that anything better is coming to the floor anytime soon—and even the New Coke version of this bill is better than nothing, and certainly better than the House Intelligence bill."