

### **PATRIOT Act Reauthorization—What are the reforms?**

On March 7 the House of Representatives voted (280-138) to pass legislation reauthorizing the USA PATRIOT Act. Despite years of work done by ALA members, our allies in the civil liberties arena, and dedicated Members of Congress, the legislation does not include most of the meaningful reforms we hoped would restore the privacy rights of America's library users.

It does, however, contain some reforms. Following is a brief outline of some of the major provisions included in Section 215 of the reauthorized bill. (For more information, including information on Section 505, visit [www.ala.org/espy](http://www.ala.org/espy).)

#### **Sunsets**

A sunset of December 31, 2009, was established for Section 215 of the USA PATRIOT Act.

#### **Standards**

The standards under which the FBI can obtain library records in the course of an investigation are slightly more stringent under the new law. Under the original PATRIOT Act, the FBI had only to assert that records were "sought" for an authorized investigation "to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities."

Under the new legislation, the FBI can obtain library records of anyone when they present facts showing "reasonable grounds" to believe that the records are "relevant" to an authorized investigation as described above.

#### **Individualized suspicion**

The reauthorized statute brings in SAFE Act language regarding individualized suspicion, but it does not *require* the FBI to show such

individualized suspicion and so it leaves the door open to wide search order requests.

#### **Approval**

The law requires the director of the FBI, or (if delegated) the deputy director of the FBI or the FBI executive assistant director for national security, to personally approve any request for records from a library or bookstore or for firearms, tax return, educational or medical records.

#### **Disclosure**

The reauthorized PATRIOT Act reforms the original legislation by allowing disclosure of receipt of a Section 215 order to "any person to whom disclosure is necessary to comply with such order." It also explicitly allows a recipient to consult an attorney and to obtain legal advice or assistance "with respect to the production of things in response to the order;" and also allows disclosure to "other persons as permitted" by the director of the FBI or the director's designee.

#### **Challenges**

The reauthorization legislation allows a recipient to challenge a Section 215 order. But that challenge can occur only in a special "petition review panel" of the FISA court—and challenges can only be filed in order to determine the "lawfulness" of the order. It is not clear why a FISA review panel would find that a FISA judge issued an unlawful order.

The reauthorization legislation also allows a Section 215 order recipient to challenge the gag order attached to the subpoena. But the challenge is restricted and recipients may challenge only after one year.

#### **Reports**

The reauthorized PATRIOT Act requires that the Department of Justice submit unclassified reports on the use of Section 215 orders annually in April to the House and Senate Judiciary and Intelligence Committees. *zz*.

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