DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

AUG 24 2012

The Honorable Ron Wyden
United States Senate

The Honorable Mike Lee
United States Senate

The Honorable Rand Paul
United States Senate

The Honorable Mark Begich
United States Senate

The Honorable Jon Tester
United States Senate

The Honorable Tom Udall
United States Senate

The Honorable Maria Cantwell
United States Senate

The Honorable Mark Udall
United States Senate

The Honorable Jeff Merkley
United States Senate

The Honorable Chris Coons
United States Senate

The Honorable Jeff Bingaman
United States Senate

The Honorable Bernard Sanders
United States Senate

The Honorable Dick Durbin
United States Senate

Dear Senators:

Thank you for your July 26, 2012, letter on the FISA Amendments Act (FAA). As you noted, reauthorization of FAA is an extremely high priority for the Administration. The FAA authorities have proved to be an invaluable asset in our effort to detect and prevent threats to our nation and our allies.

The members of the Intelligence Community and I appreciate the need for Congress to be fully informed about this statute as it considers reauthorization. We have repeatedly reported to the Intelligence and Judiciary committees of both the House and Senate how we have implemented the statute, the operational value it has afforded, and the extensive measures we take to ensure that the Government's use of these authorities comports with the Constitution and the laws of the United States. Our record of transparency with the Congress includes many formal briefings and hearings, numerous written notifications and reports, and countless hours that our legal, operational, and compliance experts have spent in detailed discussions, briefings, and demonstrations with committee staff and counsel. In addition, we have provided classified and unclassified white papers, available to any Member of Congress, detailing how the law is implemented, the robust oversight involved, and the nature and value of the resulting collection.

This extensive history of interaction with Congress has included discussions, within the past several months, of the issues raised in your letter of July 26. We have met at length with committee staff and counsel to discuss the legal and operational parameters associated with use of FAA 702. With the benefit of this information, the committees have reported FAA reauthorization legislation. We urge that it be brought to the floor of the Senate and House, and enacted without amendment as proposed by the Administration at the earliest possible date.

This degree of transparency with Congress has been possible because these hearings, briefings, reports, and discussions have generally been classified. The issues you have raised cannot be accurately and thoroughly addressed in an unclassified setting without revealing intelligence sources and methods, which would defeat the very purpose for which the laws were enacted. It remains vitally important to avoid public disclosure of sources and methods with respect to section 702 in order to protect the efficacy of this important provision for collecting foreign intelligence information.

The ability to discuss these issues in a classified setting allows us to be completely transparent with Congress on behalf of the American people. We are committed to continuing that transparency. Although a meaningful and accurate unclassified response to the important questions you have asked is not possible, I am enclosing a classified response that addresses your questions in detail.

That said, there is a point in your letter I would like to address directly. I strongly take exception to the suggestion that there is a "loophole" in the current law concerning access to communications collected under section 702 of the FAA. While our collection methods are classified, the basic standards for that collection are a matter of public law:

- Section 702 only permits targeting of non-U.S. persons reasonably believed to be located outside of the United States. It does not permit targeting of U.S. persons anywhere in the world, or of any person inside the United States.
- Section 702 prohibits so-called "reverse targeting" – targeting a person located outside the United States as a pretext when the real goal is to target a person inside the United States.
- Section 702 prohibits the intentional acquisition of any communication when all communicants are known at the time of acquisition to be within the United States.

In enacting these standards for collection, Congress understood that some communications of U.S. persons would be incidentally acquired, and the statute therefore specifies minimization procedures that restrict that acquisition, retention, and dissemination of any information about U.S. persons. The Foreign Intelligence Surveillance Court is required by statute to ensure that those procedures are both reasonably designed to ensure compliance with the above limitations and consistent with the Fourth Amendment. In addition, components of the Executive Branch, including both my office and the Department of Justice, regularly assess compliance with the targeting and minimization procedures. Finally, the Intelligence Committees have been fully briefed on both the law and how the government collects and uses information under section 702. In short, there is no loophole in the law.

As the legislation comes up for floor consideration, we would welcome the opportunity to meet with any Senator or appropriately cleared staff member to address these issues in a classified setting. I have asked Kathleen Turner, Director of my Office of Legislative Affairs, to contact your offices to try to schedule a briefing.

I appreciate your taking the time to share your views with me, and I look forward to working with you to ensure that Congress has a full understanding of these and any other concerns you may have as the Senate considers legislation to reauthorize the FAA this fall.

Sincerely,

James R. Clapper

Enclosure
UNCLASSIFIED upon removal of Enclosure