

Section 702 Surveillance Authority Will Not Lapse if Reauthorized by March 2027

Background: Section 702 lapse and the continuing certifications.

Although Section 702 of the Foreign Intelligence Surveillance Act expired on June 12, 2026, surveillance may continue until March 17, 2027. The surveillance operates under yearlong certifications approved annually by the FISA Court. The [law](#) is clear that these certifications, and the directives issued to companies under them, remain valid until their expiration date, even if the underlying statute expires. The FISA Court [approved](#) the most recent certifications on [March 17, 2026](#), locking in surveillance authority until March 17, 2027.

Prior to the statutory lapse, surveillance hawks nonetheless attempted to pressure Members into reauthorizing Section 702 without reforms by claiming that if it expired, communications service providers might stop cooperating and Section 702 would “go dark.” As expected, these claims have been proven false. Providers are [continuing](#) to cooperate, as they must under the law.

It appears the government is now attempting to manufacture yet another false sense of urgency by asserting that Section 702 must be reauthorized by November 2026 to allow the FISA Court sufficient time to approve new certifications before March 2027. **On the contrary, as long as Congress renews the statute by March 17, 2027, Section 702 surveillance authority will not lapse.** Members must once again recognize any claimed urgency for what it is: a thinly veiled scare tactic aimed at preventing consideration of real reforms, including a warrant requirement for U.S. person queries.

Failing to renew Sec. 702 before March 17, 2027 will not result in a lapse of surveillance authority.

Typically, there is a 60-day period between when the government first submits materials to the FISA Court and when the FISA Court approves the certifications. (Here’s the math: The government normally [files](#) “proposed” applications for new certifications 30 days before submitting a final version, which the FISA Court generally has [30 days](#) to review.) If it were necessary for the FISA Court to approve the new certifications by March 17, 2027, the government would need to submit its materials—and Congress would need to reauthorize Section 702—by mid-January 2027. That’s nowhere near November 2026.

But the FISA Court’s approval is *not* necessary to extend surveillance past March 17, 2027. Under [Section 702\(j\)\(5\)\(B\)](#), **the mere filing of a final application for new certifications automatically extends the existing certifications** pending the FISA Court’s review. To avoid a lapse in authority, the government need only file an application before March 17, 2027. **That means March 17, 2027, is also the deadline for Congress to renew the law.**

If the government needs more time, Congress can briefly extend the existing certifications.

If Congress reauthorizes Section 702 with significant reforms close to the March 17 deadline, the government may require additional time to update the program procedures that accompany the new certifications. There is a straightforward solution in such a scenario: **Congress can simply include a provision that extends the existing certifications for a brief period** while the government prepares the updated certifications. The appropriate solution is *not* rushing through a renewal at the expense of Americans’ rights.

Nor is the solution a short-term straight reauthorization of the lapsed statute. **Even a brief renewal without reforms could allow the government to obtain another yearlong certification**, making it the functional equivalent of a clean one-year reauthorization.

Congress has time to negotiate real reforms and tools to prevent any possible lapse in surveillance authority. **Members should once again refuse to be pressured by a manufactured sense of urgency.**

For questions about Section 702, contact Liza Goitein at goiteine@brennan.law.nyu.edu or Hannah James at jamesh@brennan.law.nyu.edu.