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<http://www.fas.org/irp/crs/RL31377.pdf>

- ◆ For an in-depth look at the Patriot Act from the Congressional Research Service, see:
- ◆ For a full guide to what sunsets, visit www.aclu.org/sunsets
- ◆ Information on the bipartisan Patriot Act reform proposal known as the SAFE Act is at: www.aclu.org/safe
- ◆ The ACLU's landing page for all things Patriot Act, including the text of the law, is at: www.aclu.org/patriot

RESOURCES ON THE PATRIOT ACT

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THE PATRIOT ACT FOUR YEARS LATER: RESTORE CHECKS AND BALANCES

WHEN IT ADOPTED THE PATRIOT ACT, CONGRESS WISELY INSISTED THAT PARTS OF IT EXPIRE (OR "SUNSET") THIS YEAR UNLESS LAWMAKERS VOTE TO RENEW THEM.

CONGRESS MUST NOW USE THE SUNSET DEBATE AS AN OPPORTUNITY TO EXAMINE HOW CHECKS AND BALANCES HAVE BEEN ERODED IN THE NAME OF NATIONAL SECURITY -- AND HOW THEY NEED TO BE RESTORED TO PROTECT OUR LIBERTIES.

In October 2001, a mere 45 days after the terrorist attacks of 9/11, Congress passed the sweeping counterterrorism law known as the USA Patriot Act. While its secret search, surveillance and investigative authorities are troubling in their own right, the Patriot Act has also become a rallying point for bipartisan concern about broad erosions of fundamental checks and balances against government abuse.

Because Congress insisted that several of the most contentious sections of the Patriot Act expire (or “sunset”) this year, unless it votes to renew them, the House and Senate now have the opportunity to open a debate about the Bush administration’s failure to adequately take constitutional concerns into account in its national security policy.

The Bush administration opposes any proposal designed to restore checks and balances in the Patriot Act. The White House will undoubtedly use the debate over the sunsets to try to expand the law and make it permanent.

Lawmakers must do more than just debate the sunsets. Congress should use the opportunity to address the whole universe of civil liberties issues that have arisen since 9/11, including a number of provisions in the Patriot Act that do not sunset but nonetheless grant too much unchecked power to the White House. We must insist that Congress restore checks and balances so that this power is not abused.

Why Congress Needs to Reexamine the Patriot Act

- The Patriot Act was passed in haste to prevent what many in Congress believed was an imminent second attack; Congress must look anew at these provisions to judge whether they are effective and whether they incorporate much needed checks and balances.
- The scheduled expiration of the “sunset” powers gives Congress a great degree of leverage in demanding enhanced checks and balances when it takes up the Patriot Act this year.

Several expiring provisions provide a window into just how unchecked and imbalanced the president’s power has become relative to the other branches of government. For instance:

- Section 215 allows the FBI to seize a vast array of sensitive personal information and belongings -- including medical, library and business records – using secret intelligence tools that do not require individual criminal activity. Although the records can only be seized pursuant to a court order, judges are compelled to issue these orders, making such judicial review nothing more than a rubber stamp.

Crucially, several other provisions do not sunset, but should be included in this broader catalogue of unnecessary expansions of the executive branch’s police power. For instance:

- Section 213 allows the government to execute search warrants and seize property without telling the target for weeks or months.
- Section 505 lowers the evidentiary standard for “national security letters,” or NSLs. These are like subpoenas but are issued at the sole discretion of the Justice Department, impose a blanket gag order on recipients and are not subject to prior judicial review. NSLs can be used to seize a wide variety of business and financial records, and in certain instances could be used to access the membership lists of organizations that provide even very limited Internet services.

The Bottom Line

- **Given the approaching sunset of certain controversial Patriot Act provisions, Congress should reexamine and reform the law, and should not restrict its inquiry only to those sections that sunset.**
- **Congress should resist White House pressure to expand presidential authority under the Patriot Act and should instead restore checks and balances against the abuse of power.**