



Legislative Bulletin February 8, 2011

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H.R. 514- To extend expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004 relating to access to business records, individual terrorists as agents of foreign powers, and roving wiretaps until December 8, 2011 (Sensenbrenner, WI-05).

Order of Business: H.R. 514 is scheduled to be considered on Tuesday, February 8, 2011 under suspension of the rules requiring two-thirds majority vote for passage.

Summary: H.R. 514 extends through December 8, 2011 two provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and one provision of the Intelligence Reform and Terrorism Prevention Act of 2004 scheduled to expire on February 28, 2011. The three total provisions are: Foreign Intelligence Service Act (FISA) roving wiretaps provision (Section 206), FISA business records provision (Section 215), and the “lone-wolf” provision (Section 6001 of the Intelligence Reform and Terrorism Prevention Act).

Additional Background: The Department of Defense Appropriations Act (H.R. 3326, PL 111-118) extended these provisions that were set to expire on December 31, 2009 through February 28, 2010. These same provisions were then extended for an additional year to February 28, 2011 through passage of the Motion to Concur in the Senate Amendments to H.R. 3961 (PL 111-141).

Section 206 permits roving FISA surveillance orders (roving wiretaps). Orders do not need to specifically identify or name individuals when targets take actions to thwart surveillance. Thus, a roving wiretap may cover multiple locations, establishments, or neighborhoods because the target is being evasive and intentionally using multiple telephones for communication (rather than a single cell phone that could be more easily wiretapped). This provision is widely referred to as a “John Doe wiretap” since it allows for a surveillance order without authorities having to name a specific person under

surveillance.

Section 215 permits access to “tangible items” under FISA, including business records for hotels, motels, automobile rentals, storage facilities, library activities, internet service provider records, and other tangible items, regardless of the individual holding the item. This provision is widely referred to as the “Library” provision since library records are included in the type of “tangible items” available under a FISA order. Section 215 does not allow the federal government to monitor the library and bookstore activities of ordinary, law-abiding citizens—the federal government must first demonstrate to a court that the business records are sought in connection with international terrorism or clandestine intelligence activities.

Section 6001 amends the definition of an “agent of a foreign power” to include a foreign national who is preparing for or engaging in international terrorism. The modification precluded the need to show an illegal activity is being conducted on behalf of a foreign power (as long as the target is not a U.S. citizen or permanent resident). For more information on the PATRIOT Act and these provisions, see the RSC bulletin on the PATRIOT Act from 2005 here:

http://rsc.jordan.house.gov/UploadedFiles/LB_121405_PATRIOTmeth.pdf

Committee Action: H.R. 514 was introduced by Rep. James F. Sensenbrenner (WI-05) on January 26, 2011 and referred to the Committee on the Judiciary and House Permanent Select Committee on Intelligence. No further Committee action has been taken.

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: No CBO score was available at press time.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there’s no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: Rep. Sensenbrenner’s Constitutional Authority Statement for H.R. submitted into the Congressional Record upon introduction on January 26, 2011 states: “Congress has the power to enact this legislation pursuant to the following: The authority to enact this bill is derived from, but may not be limited to, Article I, Section 8, Clause 1 of the United States Constitution.”

RSC Staff Contact: Joe Murray, joe.murray@mail.house.gov, (202) 226-2075.

H.R. ___ - To extend trade adjustment assistance and the Andean Trade Preference Act, and for other purposes (Camp, R-MI)

Order of Business: The legislation is scheduled to be considered on Tuesday, February 8, 2011, under a motion to suspend the rules and pass the bill.

Summary: H.R. ___ would extend Trade Adjustment Assistance (TAA) programs through July 1, 2011. Currently, most of these programs are set to expire February 12, 2011. More detail about the individual TAA programs is below. These programs provide additional unemployment benefits and training assistance to workers who lose their jobs as a result of foreign competition. These programs were either created, or greatly expanded, by the Democrats' "stimulus."

Extending just the TAA stimulus provisions would cost roughly \$620 million until the end of 2011 or more than \$6.5 billion over ten years. Canceling this additional funding would allow any proposed offsets to be used for deficit reduction instead.

This legislation also extends the Andean Trade Preference Act (ATPA), which is set to expire on February 12, 2011, until June 30, 2011. More information about the ATPA is below.

The legislation's offset is a reduction of funding for a grant program that originated in H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (Obamacare).

For more information about Conservative Concerns with provisions in this legislation, see below.

Additional TAA Background: There are four types of Trade Adjustment Assistance available. All programs were greatly expanded under the Democrats' "stimulus" and most are set to expire on February 12, 2011 (with the exception of the TAAW & HCTC discussed below). The various Trade Adjustment Assistance programs include: Trade Adjustment Assistance for Communities (Department of Commerce), Trade Adjustment Assistance for Firms (Department of Commerce), Trade Adjustment Assistance for Farmers (Department of Agriculture), and Trade Adjustment Assistance for Workers (Department of Labor).

Trade Adjustment Assistance for Communities (TAAC): This program was created by the Democrats' "stimulus." The TAAC awards planning and implementation grants to certain trade-impacted communities, and it creates a competitive grant program for community colleges in impacted communities. The TAAC also has a grant program intended to encourage the creation of public-private partnerships that develop a skilled workforce. Workers who receive assistance under this program are also eligible to receive assistance under the Trade Adjustment Assistance for Workers program. The Supplemental Appropriations Act of 2009 ([roll call vote here](#)) included \$40 million for

the TAAC and the Trade Adjustment Assistance for Firms. The Consolidated Appropriations Act for FY2010 ([roll call vote here](#)) appropriated \$15.8 million for TAAC and the Trade Adjustment Assistance for Firms. The Health Care and Education Reconciliation Act of 2010 (Obamacare), ([roll call vote here](#)) included \$500 million in funding for each of the fiscal years FY2011 through FY2014 for community colleges and career training grants. For more information about the TAAC, see [this CRS report](#).

Trade Adjustment Assistance for Firms (TAAF): The TAAF program provides technical assistance to trade-affected firms for the purpose of helping them develop strategies and make adjustments so that they will remain competitive in the changing marketplace. The program was expanded under the Democrat “stimulus,” and now covers service industry firms. Additionally, the stimulus raised the annual authorization from \$16 million to \$50 million. There are 11 Trade Adjustment Assistance Centers (TAACs), who will apply for EDA grants to operate. No funds go directly to firms, but instead to TAACs. TAACs are staffed by consultants which provide or contract for technical assistance to assist firms. In 2009, this program assisted 172 firms assisted at an average amount of \$60,123 per firm. For more information about the TAAF, see [this CRS report](#).

Trade Adjustment Assistance for Farmers (TAAF): The TAAF provides cash benefits, and technical assistance, to agricultural producers and fisherman who are adversely impacted by trade, or increased imports. This program began in 2002 and was expanded under the Democrats “stimulus.” The stimulus increased annual funding to \$200 million through 2010. This program is administered through the United States Department of Agriculture (USDA) and there is a two-step process in administering benefits. Producers groups must become certified to receive benefits. To do this, they must show at least a 15% decline in the price of the commodity, the quantity of the commodity produced, or the production value of the commodity.

Once the group is certified, an individual producer must show that:

- The commodity was produced in the current and also the recent previous year;
- The quantity of the commodity produced decreased compared to that in a previous year, or the price received for the commodity decreased compared to a preceding three-year average price; and
- No benefits were received under any other trade adjustment assistance program.

Financial assistance is capped at \$12,000 over a three-year period, and must be used by the producer to develop and implement an adjustment plan to address increased competition. The USDA has certified 11 of the 30 petitions filed by producer groups and fisherman. There is a training component of this program that is to aid the producer in becoming more competitive in producing the same (or another) commodity. For more information about the TAAF, see [this CRS report](#).

Trade Adjustment Assistance for Workers (TAAW): The TAAW provides assistance to certain workers who lost their jobs directly due to increases of imports, or changes in

production out of the United States. The benefits of this program to individual workers begin after their unemployment compensation has ended. The TAAW provides cash benefits for up to 156 weeks. Some workers who are 50 or older may qualify to receive Reemployment Trade Adjustment Assistance (RTAA), which is another wage supplement program. Recipients of TAAW and RTAA can receive a Health Coverage Tax Credit (HCTC), which is a tax credit of up to 80% of health insurance premiums. In FY 2010, \$1.1 billion was appropriated for TAAW unemployment benefits (this is separate than the Unemployment Trust Fund). Training programs under TAAW receive \$575 million annually. The RTAA is appropriated as an entitlement, and received \$65 million in FY 2010.

The HCTC, an advanced refundable tax credit for health care premiums, does not end after February 12, regardless of passage of this legislation. Instead, the credit would revert to its pre-stimulus size, reducing the federal share from 80% to 65%. This expiration, combined with the expiration of other health care stimulus provisions, saves roughly \$125 million until the end of the year. For more information about the TAAW, see [this CRS report](#).

Additional Andean Trade Preference Act Background: This legislation was originally enacted December 4, 1991 and aids certain Andean countries in fighting drug production and trafficking. The original countries included were Bolivia, Peru, Colombia, and Ecuador. Bolivia was suspended as an ATPA beneficiary country on December 15, 2008. The United States-Peru Trade Promotion Agreement became effective February 1, 2009, and Peru's trade preferences were therefore not renewed in 2010. The countries currently included are Colombia and Ecuador. The ATPA provides these countries duty-free access to the U.S. market, in hopes that that will discourage producers in those countries from drug trafficking. For more information, see this report from the [U.S. Trade Representative's office](#).

Conservative Concerns: Conservative may be concerned with the following:

- **Previous Conservative Opposition to the Program:** Previous RSC budgets would have eliminated the TAA programs. Additionally, House Republicans voted to eliminate TAA programs in 1995 as part of the budget resolution.
- **Reauthorizing programs that were vastly expanded/created by the “stimulus.”** Some of the TAA programs being reauthorized by this legislation were more than doubled in size by the “stimulus” bill. Some conservatives may be concerned about extending programs at higher stimulus-provided levels.
- **These programs pick winners and losers.** Under TAA programs, the government picks winners and losers because TAA favorably discriminates toward workers who lost their jobs due to trade. As James Sherk with the [The Heritage Foundation](#) put it: “The worker who loses his job to a foreign competitor should receive the same treatment as the Blockbuster employee who lost his job to Netflix.” Some conservatives may be concerned that the government is singling out trade-displaced workers for extra generous benefits compared to other displaced workers.

- **Political Chess Game:** Previously, these programs have been extended under the promise that Congress would move on one of the pending free trade agreements. Two years after the “stimulus,” there has yet to be major progress made.
- **Duplicative Programs:** The central components (job-training, unemployment subsidies, health-care subsidies) of these TAA programs are duplicative and are available under various other federal programs.
- **Opportunity for Savings:** Extending just the TAA “stimulus” provisions would cost roughly \$620 million until the end of 2011, or more than \$6.5 billion over ten years. Canceling this additional funding would allow any proposed offsets to be used for deficit reduction instead.
- **Ineffective Programs:** There is little data that shows that TAA programs positively impact the earnings of participants. A [Government Accountability Office](#) report concluded that TAA beneficiaries are more likely to earn less in their next job.

Supporting Arguments from the Ways and Means Subcommittee on Trade’s Majority Office:

- Colombia has suffered, as consideration of the bilateral trade agreement has been delayed, and continuation of the ATPA will provide critical support to a strong U.S. ally in the Western Hemisphere.
- This legislation is necessary in order to continue a statutory delay in the ability of the Obama Administration, through a federal regulation last year, to mandate that states only use public employee union members to administer the TAA program in their state.

Outside Groups: The Heritage Foundation and the CATO Institute have both expressed opposition to extending TAA provisions.

Additionally, the following outside groups have expressed opposition to this legislation:

- American Conservative Union
- Club for Growth – They will be scoring this as a key vote.

The following groups have expressed support for this legislation:

- The U.S. Chamber of Commerce
- The Coalition of Service Industries
- American Apparel & Footwear Association (AAFA)

Committee Action: H.R. __ has yet to be introduced.

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: CBO estimates this legislation, compared to the baseline, will reduce the deficit by \$24 million over the 2011-2021 period. This comes from \$178 million of new spending relative to the baseline, and \$36 million of revenue losses, as

well as \$238 million in spending reductions. It is important to remember that this CBO score only scores the cost of extending the changes made by the stimulus, and does not include the non-stimulus TAA spending. This CBO score is derived from a baseline which assumes that the TAA programs would be extended at their pre-stimulus levels. Therefore, this CBO score does not score the programs themselves. It only scores the changes made by the stimulus through July 1, 2011. If these programs were allowed to expire on February 12, 2011, and not extended, federal spending would be further reduced.

The legislation's offset is a reduction of funding for a grant program that originated in H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (Obamacare).

Does the Bill Expand the Size and Scope of the Federal Government?: The legislation extends several TAA programs that were created/greatly expanded by the "stimulus."

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A statement of constitutional authority is currently unavailable.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-9717.
