

Calendar No. 177

111TH CONGRESS
1ST SESSION

S. 1692

To extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2009

Mr. LEAHY (for himself, Mr. CARDIN, Mr. KAUFMAN, Mr. SANDERS, Mrs. FEINSTEIN, Mr. WHITEHOUSE, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 13, 2009

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA PATRIOT Act
5 ~~Sunset Extension Act of 2009~~”.

1 **SEC. 2. SUNSETS.**

2 (a) ~~SECTIONS 206 AND 215 SUNSET.—~~

3 (1) ~~IN GENERAL.—~~Section 102(b)(1) of the
4 USA PATRIOT Improvement and Reauthorization
5 Act of 2005 (Public Law 109–177; 50 U.S.C. 1805
6 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862
7 note) is amended by striking “2009” and inserting
8 “2013”.

9 (2) ~~CONFORMING AMENDMENTS.—~~

10 (A) ~~IN GENERAL.—~~Section 601(a)(1)(D)
11 of the Foreign Intelligence Surveillance Act of
12 1978 (50 U.S.C. 1871(a)(1)(D)) is amended by
13 striking “section 501;” and inserting “section
14 502 or under section 501 pursuant to section
15 102(b)(2) the USA PATRIOT Improvement
16 and Reauthorization Act of 2005 (Public Law
17 109–177; 50 U.S.C. 1861 note);”.

18 (B) ~~APPLICATION UNDER SECTION 404 OF~~
19 ~~THE FISA AMENDMENTS ACT OF 2008.—~~Section
20 404(b)(4)(A) of the FISA Amendments Act of
21 2008 (Public Law 110–261; 122 Stat. 2477) is
22 amended by striking the period at the end and
23 inserting “; except that paragraph (1)(D) of
24 such section 601(a) shall be applied as if it read
25 as follows:

1 ~~“(D) access to records under section 502 or~~
2 ~~under section 501 pursuant to section~~
3 ~~102(b)(2) the USA PATRIOT Improvement~~
4 ~~and Reauthorization Act of 2005 (Public Law~~
5 ~~109–177; 50 U.S.C. 1861 note);”.~~

6 ~~(C) EFFECTIVE DATE.—~~The amendments
7 made by this paragraph shall take effect on De-
8 cember 31, 2013.

9 ~~(b) EXTENSION OF SUNSET RELATING TO INDI-~~
10 ~~VIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.—~~

11 ~~(1) IN GENERAL.—~~Section 6001(b) of the Intel-
12 ligence Reform and Terrorism Prevention Act of
13 2004 (Public Law 108–458; 50 U.S.C. 1801 note)
14 is amended to read as follows:

15 ~~“(b) SUNSET.—~~

16 ~~“(1) REPEAL.—~~Subparagraph ~~(C)~~ of section
17 ~~101(b)(1)~~ of the Foreign Intelligence Surveillance
18 Act of 1978 (50 U.S.C. 1801(b)(1)), as added by
19 subsection (a), is repealed effective December 31,
20 2013.

21 ~~“(2) TRANSITION PROVISION.—~~Notwithstanding
22 paragraph ~~(1)~~, subparagraph ~~(C)~~ of section
23 ~~101(b)(1)~~ of the Foreign Intelligence Surveillance
24 Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue
25 to apply after December 31, 2013, with respect to

1 any particular foreign intelligence investigation or
 2 with respect to any particular offense or potential of-
 3 fense that began or occurred before December 31,
 4 2013.”.

5 (2) CONFORMING AMENDMENT.—

6 (A) IN GENERAL.—Section 601(a)(2) of
 7 the Foreign Intelligence Surveillance Act of
 8 1978 (50 U.S.C. 1871(a)(2)) is amended by
 9 striking the semicolon at the end and inserting
 10 “pursuant to subsection (b)(2) of section 6001
 11 of the Intelligence Reform and Terrorism Pre-
 12 vention Act of 2004 (Public Law 108–458; 50
 13 U.S.C. 1801 note);”.

14 (B) EFFECTIVE DATE.—The amendment
 15 made by subparagraph (A) shall take effect on
 16 December 31, 2013.

17 (c) NATIONAL SECURITY LETTERS.—

18 (1) IN GENERAL.—Effective on December 31,
 19 2013, the following provisions of law are repealed:

20 (A) Section 2709 of title 18, United States
 21 Code.

22 (B) Section 1114(a)(5) of the Right to Fi-
 23 nancial Privacy Act of 1978 (12 U.S.C.
 24 3414(a)(5)).

1 (C) Subsections (a) and (b) of section 626
2 of the Fair Credit Reporting Act (15 U.S.C.
3 1681u).

4 (D) Section 627 of the Fair Credit Report-
5 ing Act (15 U.S.C. 1681v).

6 (E) Section 802 of the National Security
7 Act of 1947 (50 U.S.C. 436).

8 (2) TRANSITION PROVISION.—Notwithstanding
9 paragraph (1), the provisions of law referred to in
10 paragraph (1) shall continue to apply after Decem-
11 ber 31, 2013, with respect to any particular foreign
12 intelligence investigation or with respect to any par-
13 ticular offense or potential offense that began or oc-
14 curred before December 31, 2013.

15 (3) TECHNICAL AND CONFORMING AMEND-
16 MENTS.—

17 (A) TITLE 18.—Title 18, United States
18 Code, is amended—

19 (i) in the table of sections for chapter
20 121, by striking the item relating to sec-
21 tion 2709;

22 (ii) by striking section 3511; and

23 (iii) in the table of sections for chap-
24 ter 223, by striking the item relating to
25 section 3511.

1 (B) FAIR CREDIT REPORTING ACT.—The
2 Fair Credit Reporting Act (15 U.S.C. 1681) is
3 amended—

4 (i) in section 626 (15 U.S.C.
5 1681u)—

6 (I) in subsection (d)(1), by strik-
7 ing “the identity of financial institu-
8 tions or a consumer report respecting
9 any consumer under subsection (a),
10 (b), or (c)” and inserting “a consumer
11 report respecting any consumer under
12 subsection (c)”;

13 (II) in subsection (h)(1), by
14 striking “subsections (a), (b), and
15 (c)” and inserting “subsection (c)”;
16 and

17 (ii) in the table of sections, by striking
18 the item relating to section 627.

19 (C) NATIONAL SECURITY ACT OF 1947.—
20 The National Security Act of 1947 (50 U.S.C.
21 401 et seq.) is amended—

22 (i) in section 507(b) (50 U.S.C.
23 415b(b))—

24 (I) by striking paragraph (5);
25 and

1 (H) by redesignating paragraph
 2 (6) as paragraph (5); and
 3 (ii) in the table of contents, by strik-
 4 ing the item relating to section 802.

5 (D) EFFECTIVE DATE.—The amendments
 6 made by this paragraph shall take effect on De-
 7 cember 31, 2013.

8 **SEC. 3. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS**
 9 **FOR ACCESS TO TANGIBLE THINGS.**

10 (a) IN GENERAL.—Section 501 of the Foreign Intel-
 11 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is
 12 amended—

13 (1) in the section heading, by striking “**CER-**
 14 **TAIN BUSINESS RECORDS**” and inserting “**TAN-**
 15 **GIBLE THINGS**”;

16 (2) in subsection (b)(2), by striking subpara-
 17 graphs (A) and (B) and inserting the following:

18 “(A) a statement of facts showing that
 19 there are reasonable grounds to believe that the
 20 records or other things sought—

21 “(i) are relevant to an authorized in-
 22 vestigation (other than a threat assess-
 23 ment) conducted in accordance with sub-
 24 section (a)(2) to obtain foreign intelligence
 25 information not concerning a United

1 States person or to protect against inter-
2 national terrorism or clandestine intel-
3 ligence activities; and

4 “(ii)(I) pertain to a foreign power or
5 an agent of a foreign power;

6 “(II) are relevant to the activities of
7 a suspected agent of a foreign power who
8 is the subject of such authorized investiga-
9 tion; or

10 “(III) pertain to an individual in con-
11 tact with, or known to, a suspected agent
12 of a foreign power; and

13 “(B) a statement of proposed minimization
14 procedures.”; and

15 ~~(3)~~ in subsection (c)—

16 (A) in paragraph (1)—

17 (i) by inserting “and that the pro-
18 posed minimization procedures meet the
19 definition of minimization procedures
20 under subsection (g)” after “subsections
21 (a) and (b)”;

22 (ii) by striking the second sentence;
23 and

24 ~~(B)~~ in paragraph (2)—

1 (i) in subparagraph (D), by striking
2 “and” at the end;

3 (ii) in subparagraph (E), by striking
4 the period at the end and inserting “;
5 and”; and

6 (iii) by adding at the end the fol-
7 lowing:

8 “(F) shall direct that the minimization
9 procedures be followed.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) TITLE HEADING.—Title V of the Foreign
12 Intelligence Surveillance Act of 1978 (50 U.S.C.
13 1861 et seq.) is amended in the title heading by
14 striking “CERTAIN BUSINESS RECORDS” and
15 inserting “TANGIBLE THINGS”.

16 (2) TABLE OF CONTENTS.—The table of con-
17 tents in the first section of the Foreign Intelligence
18 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
19 is amended by striking the items relating to title V
20 and section 501 and inserting the following:

“TITLE V—ACCESS TO TANGIBLE THINGS FOR FOREIGN
INTELLIGENCE PURPOSES

“Sec. 501. Access to tangible things for foreign intelligence purposes and inter-
national terrorism investigations.”.

1 **SEC. 4. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS**
2 **FOR PEN REGISTERS AND TRAP AND TRACE**
3 **DEVICES FOR FOREIGN INTELLIGENCE PUR-**
4 **POSES.**

5 (a) IN GENERAL.—

6 (1) APPLICATION.—Section 402(c) of the For-
7 eign Intelligence Surveillance Act of 1978 (50
8 U.S.C. 1842(c)) is amended—

9 (A) in paragraph (1), by striking “and” at
10 the end; and

11 (B) by striking paragraph (2) and insert-
12 ing the following:

13 “(2) a statement of facts showing that there
14 are reasonable grounds to believe that the informa-
15 tion likely to be obtained—

16 “(A) is relevant to an authorized investiga-
17 tion (other than a threat assessment) conducted
18 in accordance with subsection (a)(1) to obtain
19 foreign intelligence information not concerning
20 a United States person or to protect against
21 international terrorism or clandestine intel-
22 ligence activities; and

23 “(B)(i) pertains to a foreign power or an
24 agent of a foreign power;

1 “(ii) is relevant to the activities of a sus-
2 pected agent of a foreign power who is the sub-
3 ject of such authorized investigation; or

4 “(iii) pertains to an individual in contact
5 with, or known to, a suspected agent of a for-
6 eign power; and

7 “(3) a statement of proposed minimization pro-
8 cedures.”.

9 (2) MINIMIZATION.—

10 (A) DEFINITION.—Section 401 of the For-
11 eign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1841) is amended by adding at the end
13 the following:

14 “(4) The term ‘minimization procedures’
15 means—

16 “(A) specific procedures that are reason-
17 ably designed in light of the purpose and tech-
18 nique of an order for the installation and use
19 of a pen register or trap and trace device; to
20 minimize the acquisition and retention, and pro-
21 hibit the dissemination, of nonpublicly available
22 information concerning unconsenting United
23 States persons consistent with the need of the
24 United States to obtain, produce, and dissemi-
25 nate foreign intelligence information;

1 “(B) procedures that require that nonpub-
2 licly available information, which is not foreign
3 intelligence information, as defined in section
4 101(e)(1), shall not be disseminated in a man-
5 ner that identifies any United States person,
6 without such person’s consent, unless such per-
7 son’s identity is necessary to understand foreign
8 intelligence information or assess its impor-
9 tance; and

10 “(C) notwithstanding subparagraphs (A)
11 and (B), procedures that allow for the retention
12 and dissemination of information that is evi-
13 dence of a crime which has been, is being, or
14 is about to be committed and that is to be re-
15 tained or disseminated for law enforcement pur-
16 poses.”.

17 (B) PEN REGISTERS AND TRAP AND TRACE
18 DEVICES.—Section 402 of the Foreign Intel-
19 ligence Surveillance Act of 1978 (50 U.S.C.
20 1842) is amended—

21 (i) in subsection (d)—

22 (H) in paragraph (1), by inserting
23 “; and that the proposed minimization
24 procedures meet the definition of
25 minimization procedures under this

1 title” before the period at the end;

2 and

3 (H) in paragraph (2)(B)—

4 (aa) in clause (ii)(H), by
5 striking “and” after the semi-
6 colon; and

7 (bb) by adding at the end
8 the following:

9 “(iv) the minimization procedures be
10 followed; and”; and

11 (ii) by adding at the end the fol-
12 lowing:

13 “(h) At or before the end of the period of time for
14 which the installation and use of a pen register or trap
15 and trace device is approved under an order or an exten-
16 sion under this section, the judge may assess compliance
17 with the minimization procedures by reviewing the cir-
18 cumstances under which information concerning United
19 States persons was acquired, retained, or disseminated.”.

20 (C) EMERGENCIES.—Section 403 of the
21 Foreign Intelligence Surveillance Act of 1978
22 (50 U.S.C. 1843) is amended—

23 (i) by redesignating subsection (e) as
24 (d); and

1 (ii) by inserting after subsection (b)
2 the following:

3 “(e) If the Attorney General authorizes the emer-
4 gency installation and use of a pen register or trap and
5 trace device under this section, the Attorney General shall
6 require that the minimization procedures required by this
7 title for the issuance of a judicial order be followed.”.

8 (D) USE OF INFORMATION.—Section
9 405(a) of the Foreign Intelligence Surveillance
10 Act of 1978 (50 U.S.C. 1845(a)) is amended by
11 striking “provisions of” and inserting “mini-
12 mization procedures required under”.

13 **SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECU-**
14 **RITY LETTERS.**

15 (a) IN GENERAL.—Section 2709 of title 18, United
16 States Code, is amended by striking subsection (c) and
17 inserting the following:

18 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

19 “(1) PROHIBITION.—

20 “(A) IN GENERAL.—If a certification is
21 issued under subparagraph (B) and notice of
22 the right to judicial review under paragraph (4)
23 is provided, no wire or electronic communica-
24 tion service provider, or officer, employee, or
25 agent thereof, that receives a request under

1 subsection (a), shall disclose to any person the
2 particular information specified in the certifi-
3 cation during the time period to which the cer-
4 tification applies, which may be not longer than
5 1 year.

6 “(B) CERTIFICATION.—The requirements
7 of subparagraph (A) shall apply if the Director
8 of the Federal Bureau of Investigation, or a
9 designee of the Director whose rank shall be no
10 lower than Deputy Assistant Director at Bu-
11 reau headquarters or a Special Agent in Charge
12 of a Bureau field office, certifies that, absent a
13 prohibition of disclosure under this subsection,
14 there may result—

15 “(i) a danger to the national security
16 of the United States;

17 “(ii) interference with a criminal,
18 counterterrorism, or counterintelligence in-
19 vestigation;

20 “(iii) interference with diplomatic re-
21 lations; or

22 “(iv) danger to the life or physical
23 safety of any person.

24 “(2) EXCEPTION.—

1 “(A) IN GENERAL.—A wire or electronic
2 communication service provider, or officer, em-
3 ployee, or agent thereof, that receives a request
4 under subsection (a) may disclose information
5 otherwise subject to any applicable nondisclo-
6 sure requirement to—

7 “(i) those persons to whom disclosure
8 is necessary in order to comply with the re-
9 quest;

10 “(ii) an attorney in order to obtain
11 legal advice or assistance regarding the re-
12 quest; or

13 “(iii) other persons as permitted by
14 the Director of the Federal Bureau of In-
15 vestigation or the designee of the Director.

16 “(B) NONDISCLOSURE REQUIREMENT.—A
17 person to whom disclosure is made under sub-
18 paragraph (A) shall be subject to the nondisclo-
19 sure requirements applicable to a person to
20 whom a request is issued under subsection (a)
21 in the same manner as the person to whom the
22 request is issued.

23 “(C) NOTICE.—Any recipient that dis-
24 closes to a person described in subparagraph
25 (A) information otherwise subject to a non-

1 disclosure requirement shall inform the person
2 of the applicable nondisclosure requirement.

3 ~~“(3) EXTENSION.—~~The Director of the Federal
4 Bureau of Investigation, or a designee of the Direc-
5 tor whose rank shall be no lower than Deputy As-
6 sistant Director at Bureau headquarters or a Special
7 Agent in Charge in a Bureau field office, may ex-
8 tend a nondisclosure requirement for additional peri-
9 ods of not longer than 1 year if, at the time of each
10 extension, a new certification is made under para-
11 graph (1)(B) and notice is provided to the recipient
12 of the applicable request that the nondisclosure re-
13 quirement has been extended and the recipient has
14 the right to judicial review of the nondisclosure re-
15 quirement.

16 ~~“(4) RIGHT TO JUDICIAL REVIEW.—~~

17 ~~“(A) IN GENERAL.—~~A wire or electronic
18 communications service provider that receives a
19 request under subsection (a) shall have the
20 right to judicial review of any applicable non-
21 disclosure requirement and any extension there-
22 of.

23 ~~“(B) TIMING.—~~

24 ~~“(i) IN GENERAL.—~~A request under
25 subsection (a) shall state that if the recipi-

1 ent wishes to have a court review a non-
2 disclosure requirement, the recipient shall
3 notify the Government not later than 21
4 days after the date of receipt of the re-
5 quest.

6 “(ii) EXTENSION.—A notice that the
7 applicable nondisclosure requirement has
8 been extended under paragraph (3) shall
9 state that if the recipient wishes to have a
10 court review the nondisclosure require-
11 ment, the recipient shall notify the Govern-
12 ment not later than 21 days after the date
13 of receipt of the notice.

14 “(C) INITIATION OF PROCEEDINGS.—If a
15 recipient of a request under subsection (a)
16 makes a notification under subparagraph (B),
17 the Government shall initiate judicial review
18 under the procedures established in section
19 3511 of this title.

20 “(5) TERMINATION.—If the facts supporting a
21 nondisclosure requirement cease to exist prior to the
22 applicable time period of the nondisclosure require-
23 ment, an appropriate official of the Federal Bureau
24 of Investigation shall promptly notify the wire or
25 electronic service provider, or officer, employee, or

1 agent thereof, subject to the nondisclosure require-
 2 ment that the nondisclosure requirement is no longer
 3 in effect.”.

4 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND
 5 CREDIT REPORTS.—Section 626 of the Fair Credit Re-
 6 porting Act (15 U.S.C. 1681u) is amended by striking
 7 subsection (d) and inserting the following:

8 “(d) PROHIBITION OF CERTAIN DISCLOSURE.—

9 “(1) PROHIBITION.—

10 “(A) IN GENERAL.—If a certification is
 11 issued under subparagraph (B) and notice of
 12 the right to judicial review under paragraph (4)
 13 is provided, no consumer reporting agency, or
 14 officer, employee, or agent thereof, that receives
 15 a request or order under subsection (a), (b), or
 16 (c), shall disclose to any person the particular
 17 information specified in the certification during
 18 the time period to which the certification ap-
 19 plies, which may be not longer than 1 year.

20 “(B) CERTIFICATION.—The requirements
 21 of subparagraph (A) shall apply if the Director
 22 of the Federal Bureau of Investigation, or a
 23 designee of the Director whose rank shall be no
 24 lower than Deputy Assistant Director at Bu-
 25 reau headquarters or a Special Agent in Charge

1 of a Bureau field office, certifies that, absent a
2 prohibition of disclosure under this subsection,
3 there may result—

4 “(i) a danger to the national security
5 of the United States;

6 “(ii) interference with a criminal,
7 counterterrorism, or counterintelligence in-
8 vestigation;

9 “(iii) interference with diplomatic re-
10 lations; or

11 “(iv) danger to the life or physical
12 safety of any person.

13 “(2) EXCEPTION.—

14 “(A) IN GENERAL.—A consumer reporting
15 agency, or officer, employee, or agent thereof,
16 that receives a request or order under sub-
17 section (a), (b), or (c) may disclose information
18 otherwise subject to any applicable nondisclo-
19 sure requirement to—

20 “(i) those persons to whom disclosure
21 is necessary in order to comply with the re-
22 quest or order;

23 “(ii) an attorney in order to obtain
24 legal advice or assistance regarding the re-
25 quest or order; or

1 “~~(iii)~~ other persons as permitted by
2 the Director of the Federal Bureau of In-
3 vestigation or the designee of the Director.

4 “~~(B)~~ NONDISCLOSURE REQUIREMENT.—A
5 person to whom disclosure is made under sub-
6 paragraph ~~(A)~~ shall be subject to the nondisclo-
7 sure requirements applicable to a person to
8 whom a request or order is issued under sub-
9 section ~~(a)~~, ~~(b)~~, or ~~(c)~~ in the same manner as
10 the person to whom the request or order is
11 issued.

12 “~~(C)~~ NOTICE.—Any recipient that dis-
13 closes to a person described in subparagraph
14 ~~(A)~~ information otherwise subject to a non-
15 disclosure requirement shall inform the person
16 of the applicable nondisclosure requirement.

17 “~~(3)~~ EXTENSION.—The Director of the Federal
18 Bureau of Investigation, or a designee of the Direc-
19 tor whose rank shall be no lower than Deputy As-
20 sistant Director at Bureau headquarters or a Special
21 Agent in Charge in a Bureau field office, may ex-
22 tend a nondisclosure requirement for additional peri-
23 ods of not longer than 1 year if, at the time of each
24 extension, a new certification is made under para-
25 graph ~~(1)~~~~(B)~~ and notice is provided to the recipient

1 of the applicable request or order that the nondisclo-
2 sure requirement has been extended and the recipi-
3 ent has the right to judicial review of the nondisclo-
4 sure requirement.

5 “(4) RIGHT TO JUDICIAL REVIEW.—

6 “(A) IN GENERAL.—A consumer reporting
7 agency that receives a request or order under
8 subsection (a), (b), or (c) shall have the right
9 to judicial review of any applicable nondisclo-
10 sure requirement and any extension thereof.

11 “(B) TIMING.—

12 “(i) IN GENERAL.—A request or order
13 under subsection (a), (b), or (c) shall state
14 that if the recipient wishes to have a court
15 review a nondisclosure requirement, the re-
16 cipient shall notify the Government not
17 later than 21 days after the date of receipt
18 of the request or order.

19 “(ii) EXTENSION.—A notice that the
20 applicable nondisclosure requirement has
21 been extended under paragraph (3) shall
22 state that if the recipient wishes to have a
23 court review the nondisclosure require-
24 ment, the recipient shall notify the Govern-

1 ment not later than 21 days after the date
2 of receipt of the notice.

3 “(C) INITIATION OF PROCEEDINGS.—If a
4 recipient of a request or order under subsection
5 (a), (b), or (c) makes a notification under sub-
6 paragraph (B), the Government shall initiate
7 judicial review under the procedures established
8 in section 3511 of title 18, United States Code.

9 “(5) TERMINATION.—If the facts supporting a
10 nondisclosure requirement cease to exist prior to the
11 applicable time period of the nondisclosure require-
12 ment, an appropriate official of the Federal Bureau
13 of Investigation shall promptly notify the consumer
14 reporting agency, or officer, employee, or agent
15 thereof, subject to the nondisclosure requirement
16 that the nondisclosure requirement is no longer in
17 effect.”.

18 (e) DISCLOSURES TO GOVERNMENTAL AGENCIES
19 FOR COUNTERTERRORISM PURPOSES.—Section 627 of the
20 Fair Credit Reporting Act (15 U.S.C. 1681v) is amended
21 by striking subsection (e) and inserting the following:

22 “(e) PROHIBITION OF CERTAIN DISCLOSURE.—

23 “(1) PROHIBITION.—

24 “(A) IN GENERAL.—If a certification is
25 issued under subparagraph (B) and notice of

1 the right to judicial review under paragraph (4)
2 is provided; no consumer reporting agency, or
3 officer, employee, or agent thereof, that receives
4 a request under subsection (a), shall disclose to
5 any person the particular information specified
6 in the certification during the time period to
7 which the certification applies, which may be
8 not longer than 1 year.

9 “(B) CERTIFICATION.—The requirements
10 of subparagraph (A) shall apply if the head of
11 a government agency authorized to conduct in-
12 vestigations of intelligence or counterintelligence
13 activities or analysis related to international
14 terrorism, or a designee, certifies that, absent a
15 prohibition of disclosure under this subsection,
16 there may result—

17 “(i) a danger to the national security
18 of the United States;

19 “(ii) interference with a criminal,
20 counterterrorism, or counterintelligence in-
21 vestigation;

22 “(iii) interference with diplomatic re-
23 lations; or

24 “(iv) danger to the life or physical
25 safety of any person.

1 “(2) EXCEPTION.—

2 “(A) IN GENERAL.—A consumer reporting
3 agency, or officer, employee, or agent thereof,
4 that receives a request under subsection (a)
5 may disclose information otherwise subject to
6 any applicable nondisclosure requirement to—

7 “(i) those persons to whom disclosure
8 is necessary in order to comply with the re-
9 quest;

10 “(ii) an attorney in order to obtain
11 legal advice or assistance regarding the re-
12 quest; or

13 “(iii) other persons as permitted by
14 the head of the government agency author-
15 ized to conduct investigations of intel-
16 ligence or counterintelligence activities or
17 analysis related to international terrorism,
18 or a designee.

19 “(B) NONDISCLOSURE REQUIREMENT.—A
20 person to whom disclosure is made under sub-
21 paragraph (A) shall be subject to the nondisclo-
22 sure requirements applicable to a person to
23 whom a request is issued under subsection (a)
24 in the same manner as the person to whom the
25 request is issued.

1 “(C) NOTICE.—Any recipient that dis-
2 closes to a person described in subparagraph
3 (A) information otherwise subject to a non-
4 disclosure requirement shall inform the person
5 of the applicable nondisclosure requirement.

6 “(3) EXTENSION.—The head of a government
7 agency authorized to conduct investigations of intel-
8 ligence or counterintelligence activities or analysis
9 related to international terrorism, or a designee,
10 may extend a nondisclosure requirement for addi-
11 tional periods of not longer than 1 year if, at the
12 time of each extension, a new certification is made
13 under paragraph (1)(B) and notice is provided to
14 the recipient of the applicable request that the non-
15 disclosure requirement has been extended and the
16 recipient has the right to judicial review of the non-
17 disclosure requirement.

18 “(4) RIGHT TO JUDICIAL REVIEW.—

19 “(A) IN GENERAL.—A consumer reporting
20 agency that receives a request under subsection
21 (a) shall have the right to judicial review of any
22 applicable nondisclosure requirement and any
23 extension thereof.

24 “(B) TIMING.—

1 “(i) IN GENERAL.—A request under
2 subsection (a) shall state that if the recipi-
3 ent wishes to have a court review a non-
4 disclosure requirement, the recipient shall
5 notify the Government not later than 21
6 days after the date of receipt of the re-
7 quest.

8 “(ii) EXTENSION.—A notice that the
9 applicable nondisclosure requirement has
10 been extended under paragraph (3) shall
11 state that if the recipient wishes to have a
12 court review the nondisclosure require-
13 ment, the recipient shall notify the Govern-
14 ment not later than 21 days after the date
15 of receipt of the notice.

16 “(C) INITIATION OF PROCEEDINGS.—If a
17 recipient of a request under subsection (a)
18 makes a notification under subparagraph (B),
19 the Government shall initiate judicial review
20 under the procedures established in section
21 3511 of title 18, United States Code.

22 “(5) TERMINATION.—If the facts supporting a
23 nondisclosure requirement cease to exist prior to the
24 applicable time period of the nondisclosure require-
25 ment, an appropriate official of the government

1 agency authorized to conduct investigations of intel-
 2 ligence or counterintelligence activities or analysis
 3 related to international terrorism shall promptly no-
 4 tify the consumer reporting agency, or officer, em-
 5 ployee, or agent thereof, subject to the nondisclosure
 6 requirement that the nondisclosure requirement is
 7 no longer in effect.”.

8 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the
 9 Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)) is
 10 amended by striking subparagraph (D) and inserting the
 11 following:

12 “(D) PROHIBITION OF CERTAIN DISCLO-
 13 SURE.—

14 “(i) PROHIBITION.—

15 “(I) IN GENERAL.—If a certifi-
 16 cation is issued under subclause (H)
 17 and notice of the right to judicial re-
 18 view under clause (iv) is provided, no
 19 financial institution, or officer, em-
 20 ployee, or agent thereof, that receives
 21 a request under subparagraph (A),
 22 shall disclose to any person the par-
 23 ticular information specified in the
 24 certification during the time period to

1 which the certification applies, which
2 may be not longer than 1 year.

3 “(H) CERTIFICATION.—The re-
4 quirements of subclause (I) shall
5 apply if the Director of the Federal
6 Bureau of Investigation, or a designee
7 of the Director whose rank shall be no
8 lower than Deputy Assistant Director
9 at Bureau headquarters or a Special
10 Agent in Charge of a Bureau field of-
11 fice, certifies that, absent a prohibi-
12 tion of disclosure under this subpara-
13 graph, there may result—

14 “(aa) a danger to the na-
15 tional security of the United
16 States;

17 “(bb) interference with a
18 criminal, counterterrorism, or
19 counterintelligence investigation;

20 “(cc) interference with diplo-
21 matic relations; or

22 “(dd) danger to the life or
23 physical safety of any person.

24 “(ii) EXCEPTION.—

1 “(I) IN GENERAL.—A financial
2 institution, or officer, employee, or
3 agent thereof, that receives a request
4 under subparagraph (A) may disclose
5 information otherwise subject to any
6 applicable nondisclosure requirement
7 to—

8 “(aa) those persons to whom
9 disclosure is necessary in order to
10 comply with the request;

11 “(bb) an attorney in order
12 to obtain legal advice or assist-
13 ance regarding the request; or

14 “(cc) other persons as per-
15 mitted by the Director of the
16 Federal Bureau of Investigation
17 or the designee of the Director.

18 “(II) NONDISCLOSURE REQUIRE-
19 MENT.—A person to whom disclosure
20 is made under subclause (I) shall be
21 subject to the nondisclosure require-
22 ments applicable to a person to whom
23 a request is issued under subpara-
24 graph (A) in the same manner as the
25 person to whom the request is issued.

1 “(III) NOTICE.—Any recipient
2 that discloses to a person described in
3 subclause (I) information otherwise
4 subject to a nondisclosure requirement
5 shall inform the person of the applica-
6 ble nondisclosure requirement.

7 “(iii) EXTENSION.—The Director of
8 the Federal Bureau of Investigation, or a
9 designee of the Director whose rank shall
10 be no lower than Deputy Assistant Direc-
11 tor at Bureau headquarters or a Special
12 Agent in Charge in a Bureau field office,
13 may extend a nondisclosure requirement
14 for additional periods of not longer than 1
15 year if, at the time of each extension, a
16 new certification is made under clause
17 (i)(II) and notice is provided to the recipi-
18 ent of the applicable request that the non-
19 disclosure requirement has been extended
20 and the recipient has the right to judicial
21 review of the nondisclosure requirement.

22 “(iv) RIGHT TO JUDICIAL REVIEW.—

23 “(I) IN GENERAL.—A financial
24 institution that receives a request
25 under subparagraph (A) shall have

1 the right to judicial review of any ap-
2 plicable nondisclosure requirement
3 and any extension thereof.

4 “(II) TIMING.—

5 “(aa) IN GENERAL.—A re-
6 quest under subparagraph (A)
7 shall state that if the recipient
8 wishes to have a court review a
9 nondisclosure requirement, the
10 recipient shall notify the Govern-
11 ment not later than 21 days after
12 the date of receipt of the request.

13 “(bb) EXTENSION.—A no-
14 tice that the applicable nondisclo-
15 sure requirement has been ex-
16 tended under clause (iii) shall
17 state that if the recipient wishes
18 to have a court review the non-
19 disclosure requirement, the re-
20 cipient shall notify the Govern-
21 ment not later than 21 days after
22 the date of receipt of the notice.

23 “(III) INITIATION OF PRO-
24 CEEDINGS.—If a recipient of a re-
25 quest under subparagraph (A) makes

1 a notification under subclause (H);
 2 the Government shall initiate judicial
 3 review under the procedures estab-
 4 lished in section ~~3511~~ of title 18,
 5 United States Code.

6 “(v) TERMINATION.—If the facts sup-
 7 porting a nondisclosure requirement cease
 8 to exist prior to the applicable time period
 9 of the nondisclosure requirement, an ap-
 10 propriate official of the Federal Bureau of
 11 Investigation shall promptly notify the fi-
 12 nancial institution, or officer, employee, or
 13 agent thereof, subject to the nondisclosure
 14 requirement that the nondisclosure require-
 15 ment is no longer in effect.”.

16 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
 17 AGENCIES.—Section 802 of the National Security Act of
 18 1947 (50 U.S.C. 436), is amended by striking subsection
 19 (b) and inserting the following:

20 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

21 “(1) PROHIBITION.—

22 “(A) IN GENERAL.—If a certification is
 23 issued under subparagraph (B) and notice of
 24 the right to judicial review under paragraph (4)
 25 is provided, no governmental or private entity,

1 or officer, employee, or agent thereof, that re-
2 ceives a request under subsection (a), shall dis-
3 close to any person the particular information
4 specified in the certification during the time pe-
5 riod to which the certification applies, which
6 may be not longer than 1 year.

7 “(B) CERTIFICATION.—The requirements
8 of subparagraph (A) shall apply if the head of
9 an authorized investigative agency described in
10 subsection (a), or a designee, certifies that, ab-
11 sent a prohibition of disclosure under this sub-
12 section, there may result—

13 “(i) a danger to the national security
14 of the United States;

15 “(ii) interference with a criminal,
16 counterterrorism, or counterintelligence in-
17 vestigation;

18 “(iii) interference with diplomatic re-
19 lations; or

20 “(iv) danger to the life or physical
21 safety of any person.

22 “(2) EXCEPTION.—

23 “(A) IN GENERAL.—A governmental or
24 private entity, or officer, employee, or agent
25 thereof, that receives a request under sub-

1 section (a) may disclose information otherwise
2 subject to any applicable nondisclosure require-
3 ment to—

4 “(i) those persons to whom disclosure
5 is necessary in order to comply with the re-
6 quest;

7 “(ii) an attorney in order to obtain
8 legal advice or assistance regarding the re-
9 quest; or

10 “(iii) other persons as permitted by
11 the head of the authorized investigative
12 agency described in subsection (a).

13 “(B) NONDISCLOSURE REQUIREMENT.—A
14 person to whom disclosure is made under sub-
15 paragraph (A) shall be subject to the nondisclo-
16 sure requirements applicable to a person to
17 whom a request is issued under subsection (a)
18 in the same manner as the person to whom the
19 request is issued.

20 “(C) NOTICE.—Any recipient that dis-
21 closes to a person described in subparagraph
22 (A) information otherwise subject to a non-
23 disclosure requirement shall inform the person
24 of the applicable nondisclosure requirement.

1 “(3) EXTENSION.—The head of an authorized
2 investigative agency described in subsection (a), or a
3 designee, may extend a nondisclosure requirement
4 for additional periods of not longer than 1 year if,
5 at the time of each extension, a new certification is
6 made under paragraph (1)(B) and notice is provided
7 to the recipient of the applicable request that the
8 nondisclosure requirement has been extended and
9 the recipient has the right to judicial review of the
10 nondisclosure requirement.

11 “(4) RIGHT TO JUDICIAL REVIEW.—

12 “(A) IN GENERAL.—A governmental or
13 private entity that receives a request under sub-
14 section (a) shall have the right to judicial re-
15 view of any applicable nondisclosure require-
16 ment and any extension thereof.

17 “(B) TIMING.—

18 “(i) IN GENERAL.—A request under
19 subsection (a) shall state that if the recipi-
20 ent wishes to have a court review a non-
21 disclosure requirement, the recipient shall
22 notify the Government not later than 21
23 days after the date of receipt of the re-
24 quest.

1 “(ii) EXTENSION.—A notice that the
2 applicable nondisclosure requirement has
3 been extended under paragraph (3) shall
4 state that if the recipient wishes to have a
5 court review the nondisclosure require-
6 ment, the recipient shall notify the Govern-
7 ment not later than 21 days after the date
8 of receipt of the notice.

9 “(C) INITIATION OF PROCEEDINGS.—If a
10 recipient of a request under subsection (a)
11 makes a notification under subparagraph (B),
12 the Government shall initiate judicial review
13 under the procedures established in section
14 3511 of title 18, United States Code.

15 “(5) TERMINATION.—If the facts supporting a
16 nondisclosure requirement cease to exist prior to the
17 applicable time period of the nondisclosure require-
18 ment, an appropriate official of the authorized inves-
19 tigative agency described in subsection (a) shall
20 promptly notify the governmental or private entity,
21 or officer, employee, or agent thereof, subject to the
22 nondisclosure requirement that the nondisclosure re-
23 quirement is no longer in effect.”.

1 **SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL**
 2 **SECURITY LETTERS.**

3 (a) FISA.—Section 501(f)(2) of the Foreign Intel-
 4 ligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2))
 5 is amended—

6 (1) in subparagraph (A)—

7 (A) in clause (i)—

8 (i) by striking “a production order”
 9 and inserting “a production order or non-
 10 disclosure order”; and

11 (ii) by striking “Not less than 1 year”
 12 and all that follows;

13 (B) in clause (ii), by striking “production
 14 order or nondisclosure”; and

15 (2) in subparagraph (C)—

16 (A) by striking clause (ii); and

17 (B) by redesignating clause (iii) as clause
 18 (ii).

19 (b) JUDICIAL REVIEW OF NATIONAL SECURITY LET-
 20 TERS.—Section 3511(b) of title 18, United States Code,
 21 is amended to read as follows:

22 “(b) NONDISCLOSURE.—

23 “(1) IN GENERAL.—

24 “(A) NOTICE.—If a recipient of a request
 25 or order for a report, records, or other informa-
 26 tion under section 2709 of this title, section

1 626 or 627 of the Fair Credit Reporting Act
2 (15 U.S.C. 1681u and 1681v), section 1114 of
3 the Right to Financial Privacy Act (12 U.S.C.
4 3414), or section 802 of the National Security
5 Act of 1947 (50 U.S.C. 436), wishes to have a
6 court review a nondisclosure requirement im-
7 posed in connection with the request, the recipi-
8 ent shall notify the Government not later than
9 21 days after the date of receipt of the request
10 or of notice that an applicable nondisclosure re-
11 quirement has been extended.

12 “(B) APPLICATION.—Not later than 21
13 days after the date of receipt of a notification
14 under subparagraph (A), the Government shall
15 apply for an order prohibiting the disclosure of
16 particular information about the existence or
17 contents of the relevant request or order. An
18 application under this subparagraph may be
19 filed in the district court of the United States
20 for any district within which the authorized in-
21 vestigation that is the basis for the request or
22 order is being conducted. The applicable non-
23 disclosure requirement shall remain in effect
24 during the pendency of proceedings relating to
25 the requirement.

1 “(C) CONSIDERATION.—A district court of
2 the United States that receives an application
3 under subparagraph (B) should rule expedi-
4 tiously, and may issue a nondisclosure order for
5 a period of not longer than 1 year, unless the
6 facts justify a longer period of nondisclosure.

7 “(D) DENIAL.—If a district court of the
8 United States rejects an application for a non-
9 disclosure order or extension thereof, the non-
10 disclosure requirement shall no longer be in ef-
11 fect.

12 “(2) APPLICATION CONTENTS.—An application
13 for a nondisclosure order or extension thereof under
14 this subsection shall include—

15 “(A) a statement of the facts indicating
16 that, absent a prohibition of disclosure under
17 this subsection, there may result—

18 “(i) a danger to the national security
19 of the United States;

20 “(ii) interference with a criminal,
21 counterterrorism, or counterintelligence in-
22 vestigation;

23 “(iii) interference with diplomatic re-
24 lations; or

1 “(iv) danger to the life or physical
2 safety of any person; and

3 “(B) the time period during which the
4 Government believes the nondisclosure require-
5 ment should apply.

6 “(3) STANDARD.—A district court of the
7 United States may issue a nondisclosure require-
8 ment order or extension thereof under this sub-
9 section if the court determines that there is reason
10 to believe that disclosure of the information subject
11 to the nondisclosure requirement during the applica-
12 ble time period will result in—

13 “(A) a danger to the national security of
14 the United States;

15 “(B) interference with a criminal, counter-
16 terrorism, or counterintelligence investigation;

17 “(C) interference with diplomatic relations;
18 or

19 “(D) danger to the life or physical safety
20 of any person.

21 “(4) RENEWAL.—A nondisclosure order under
22 this subsection may be renewed for additional peri-
23 ods of not longer than 1 year, unless the facts of the
24 case justify a longer period of nondisclosure, upon
25 submission of an application meeting the require-

1 ments of paragraph (2), and a determination by the
2 court that the circumstances described in paragraph
3 (3) continue to exist.”.

4 (c) MINIMIZATION.—Section 501(g) of the Foreign
5 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(g))
6 is amended—

7 (1) in paragraph (1), by striking “Not later
8 than” and all that follows and inserting “At or be-
9 fore the end of the period of time for the production
10 of tangible things under an order approved under
11 this section or at any time after the production of
12 tangible things under an order approved under this
13 section, a judge may assess compliance with the
14 minimization procedures by reviewing the cir-
15 cumstances under which information concerning
16 United States persons was acquired, retained, or dis-
17 seminated.”; and

18 (2) in paragraph (2)(A), by inserting “acquisi-
19 tion and” after “to minimize the”.

20 **SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL**
21 **AND TRANSACTIONAL RECORDS.**

22 (a) IN GENERAL.—Section 2709(b)(1) of title 18,
23 United States Code, is amended—

1 (1) by striking “certifies in writing” and insert-
2 ing “provides a written certification by the Director
3 (or a designee)”; and

4 (2) by inserting “that includes a statement of
5 facts showing that there are reasonable grounds to
6 believe” before “that the name,”.

7 (b) ~~IDENTITY OF FINANCIAL INSTITUTIONS AND~~
8 ~~CREDIT REPORTS.~~—Section 626 of the Fair Credit Re-
9 porting Act (15 U.S.C. 1681u) is amended—

10 (1) in subsection (a), by striking “has deter-
11 mined in writing, that such information is sought
12 for” and inserting “provides to the consumer report-
13 ing agency a written determination that includes a
14 statement of facts showing that there are reasonable
15 grounds to believe that such information is relevant
16 to”; and

17 (2) in subsection (b), by striking “has deter-
18 mined in writing that such information is sought
19 for” and inserting “provides to the consumer report-
20 ing agency a written determination that includes a
21 statement of facts showing that there are reasonable
22 grounds to believe that such information is relevant
23 to”.

24 (c) ~~DISCLOSURES TO GOVERNMENTAL AGENCIES~~
25 ~~FOR COUNTERTERRORISM PURPOSES.~~—Section 627(a) of

1 the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is
2 amended by inserting “that includes a statement of facts
3 showing that there are reasonable grounds to believe” be-
4 fore “that such information is necessary for”.

5 (d) FINANCIAL RECORDS.—Section 1114(a)(5)(A) of
6 the Right to Financial Privacy Act (12 U.S.C.
7 3414(a)(5)(A)) is amended—

8 (1) by striking “certifies in writing” and insert-
9 ing “provides a written certification by the Director
10 (or a designee)”; and

11 (2) by striking “that such records are sought
12 for foreign counter intelligence purposes” and insert-
13 ing “that includes a statement of facts showing that
14 there are reasonable grounds to believe that such
15 records are relevant to a foreign counterintelligence
16 investigation”.

17 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
18 AGENCIES.—Section 802(a)(3) of the National Security
19 Act of 1947 (50 U.S.C. 436(a)(3)), is amended—

20 (1) by redesignating subparagraphs (B), (C),
21 and (D) as subparagraphs (C), (D), and (E), respec-
22 tively; and

23 (2) by inserting after subparagraph (A) the fol-
24 lowing:

1 this subsection shall include the total number of
2 requests described in paragraph (1) requiring
3 disclosure of information concerning—

4 “(i) United States persons;

5 “(ii) persons who are not United
6 States persons;

7 “(iii) persons who are the subjects of
8 authorized national security investigations;

9 or

10 “(iv) persons who are not the subjects
11 of authorized national security investiga-
12 tions.

13 “(B) EXCEPTION.—With respect to the
14 number of requests for subscriber information
15 under section 2709 of title 18, United States
16 Code, a report required under this subsection
17 need not provide information separated into
18 each of the categories described in subpara-
19 graph (A).”

20 **SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTEL-**
21 **LIGENCE SURVEILLANCE ACT.**

22 Section 601 of the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1871) is amended—

24 (1) by redesignating subsections (b) through (e)
25 as subsections (e) through (f), respectively;

1 (2) by inserting after subsection (a) the fol-
2 lowing:

3 “(b) PUBLIC REPORT.—The Attorney General shall
4 make publicly available the portion of each report under
5 subsection (a) relating to paragraphs (1) and (2) of sub-
6 section (a).”;

7 (3) in subsection (c), as so redesignated, by
8 striking “subsection (c)” and inserting “subsection
9 (d)”.

10 **SEC. 10. AUDITS.**

11 (a) TANGIBLE THINGS.—Section 106A of the USA
12 PATRIOT Improvement and Reauthorization Act of 2005
13 (Public Law 109–177; 120 Stat. 200) is amended—

14 (1) in subsection (b)—

15 (A) in paragraph (1), by striking “2006”
16 and inserting “2012”; and

17 (B) in paragraph (5)(C), by striking “cal-
18 endar year 2006” and inserting “each of cal-
19 endar years 2006 through 2012”;

20 (2) in subsection (c), by adding at the end the
21 following:

22 “(3) CALENDAR YEARS 2007 AND 2008.—Not
23 later than December 31, 2010, the Inspector Gen-
24 eral of the Department of Justice shall submit to the
25 Committee on the Judiciary and the Permanent Se-

1 lect Committee on Intelligence of the House of Rep-
 2 resentatives and the Committee on the Judiciary and
 3 the Select Committee on Intelligence of the Senate
 4 a report containing the results of the audit con-
 5 ducted under this section for calendar years 2007
 6 and 2008.

7 “(4) CALENDAR YEARS 2009 THROUGH 2012.—
 8 Not later than December 31, 2011, and every year
 9 thereafter through 2013, the Inspector General of
 10 the Department of Justice shall submit to the Com-
 11 mittee on the Judiciary and the Permanent Select
 12 Committee on Intelligence of the House of Rep-
 13 resentatives and the Committee on the Judiciary and
 14 the Select Committee on Intelligence of the Senate
 15 a report containing the results of the audit con-
 16 ducted under this section for the previous calendar
 17 year.”;

18 (3) in subsection (d)—

19 (A) in paragraph (1), by striking “or
 20 (e)(2)” and inserting “(e)(2), (e)(3), or (e)(4)”;
 21 and

22 (B) in paragraph (2), by striking “and
 23 (e)(2)” and inserting “(e)(2), (e)(3), or (e)(4)”;
 24 and

1 (4) in subsection (e), by striking “and (e)(2)”
2 and inserting “(e)(2), (e)(3), or (e)(4)”.

3 (b) NATIONAL SECURITY LETTERS.—Section 119 of
4 the USA PATRIOT Improvement and Reauthorization
5 Act of 2005 (Public Law 109–177; 120 Stat. 219) is
6 amended—

7 (1) in subsection (b)(1), by striking “2006”
8 and inserting “2012”;

9 (2) in subsection (e), by adding at the end the
10 following:

11 “~~(3) CALENDAR YEARS 2007 AND 2008.—Not~~
12 later than December 31, 2010, the Inspector Gen-
13 eral of the Department of Justice shall submit to the
14 Committee on the Judiciary and the Permanent Se-
15 lect Committee on Intelligence of the House of Rep-
16 resentatives and the Committee on the Judiciary and
17 the Select Committee on Intelligence of the Senate
18 a report containing the results of the audit con-
19 ducted under this section for calendar years 2007
20 and 2008.

21 “~~(4) CALENDAR YEARS 2009 THROUGH 2012.—~~
22 Not later than December 31, 2011, and every year
23 thereafter through 2013, the Inspector General of
24 the Department of Justice shall submit to the Com-
25 mittee on the Judiciary and the Permanent Select

1 Committee on Intelligence of the House of Rep-
2 resentatives and the Committee on the Judiciary and
3 the Select Committee on Intelligence of the Senate
4 a report containing the results of the audit con-
5 ducted under this section for the previous calendar
6 year.”;

7 (3) in subsection (d)—

8 (A) in paragraph (1), by striking “or
9 (e)(2)” and inserting “(e)(2), (e)(3), or (e)(4)”;

10 and

11 (B) in paragraph (2), by striking “or
12 (e)(2)” and inserting “(e)(2), (e)(3), or (e)(4)”;

13 and

14 (4) in subsection (e), by striking “or (e)(2)”
15 and inserting “(e)(2), (e)(3), or (e)(4)”.

16 (e) PEN REGISTERS AND TRAP AND TRACE DE-
17 VICES.—

18 (1) AUDITS.—The Inspector General of the De-
19 partment of Justice shall perform comprehensive au-
20 dits of the effectiveness and use, including any im-
21 proper or illegal use, of pen registers and trap and
22 trace devices under title IV of the Foreign Intel-
23 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et
24 seq.) during the period beginning on January 1,
25 2007 and ending on December 31, 2012.

1 (2) REQUIREMENTS.—The audits required
2 under paragraph (1) shall include—

3 (A) an examination of each instance in
4 which the Attorney General or any other attor-
5 ney for the Government submitted an applica-
6 tion for an order or extension of an order under
7 title IV of the Foreign Intelligence Surveillance
8 Act of 1978, including whether the court grant-
9 ed, modified, or denied the application (includ-
10 ing an examination of the basis for any modi-
11 fication or denial);

12 (B) an examination of each instance in
13 which the Attorney General authorized the in-
14 stallation and use of a pen register or trap and
15 trace device on an emergency basis under sec-
16 tion 403 of the Foreign Intelligence Surveil-
17 lance Act of 1978 (50 U.S.C. 1843);

18 (C) whether the Federal Bureau of Inves-
19 tigation requested that the Department of Jus-
20 tice submit an application for an order or ex-
21 tension of an order under title IV of the For-
22 eign Intelligence Surveillance Act of 1978 and
23 the request was not submitted to the court (in-
24 cluding an examination of the basis for not sub-
25 mitting the application);

1 (D) whether bureaucratic or procedural
2 impediments to the use of pen registers and
3 trap and trace devices under title IV of the
4 Foreign Intelligence Surveillance Act of 1978
5 prevent the Federal Bureau of Investigation
6 from taking full advantage of the authorities
7 provided under that title;

8 (E) any noteworthy facts or circumstances
9 relating to the use of a pen register or trap and
10 trace device under title IV of the Foreign Intel-
11 ligence Surveillance Act of 1978, including any
12 improper or illegal use of the authority provided
13 under that title; and

14 (F) an examination of the effectiveness of
15 the authority under title IV of the Foreign In-
16 telligence Surveillance Act of 1978 as an inves-
17 tigative tool, including—

18 (i) the importance of the information
19 acquired to the intelligence activities of the
20 Federal Bureau of Investigation or any
21 other department or agency of the Federal
22 Government;

23 (ii) the manner in which the informa-
24 tion is collected, retained, analyzed, and
25 disseminated by the Federal Bureau of In-

1 investigation, including any direct access to
2 the information provided to any other de-
3 partment, agency, or instrumentality of
4 Federal, State, local, or tribal governments
5 or any private sector entity;

6 (iii) with respect to calendar years
7 2010 through 2012, an examination of the
8 minimization procedures used in relation to
9 pen registers and trap and trace devices
10 under title IV of the Foreign Intelligence
11 Surveillance Act of 1978 and whether the
12 minimization procedures protect the con-
13 stitutional rights of United States persons;

14 (iv) whether, and how often, the Fed-
15 eral Bureau of Investigation used informa-
16 tion acquired under a pen register or trap
17 and trace device under title IV of the For-
18 eign Intelligence Surveillance Act of 1978
19 to produce an analytical intelligence prod-
20 uct for distribution within the Federal Bu-
21 reau of Investigation, to the intelligence
22 community (as defined in section 3(4) of
23 the National Security Act of 1947 (50
24 U.S.C. 401a(4))), or to other Federal,

1 State, local, or tribal government depart-
2 ments, agencies, or instrumentalities; and

3 (v) whether, and how often, the Fed-
4 eral Bureau of Investigation provided in-
5 formation acquired under a pen register or
6 trap and trace device under title IV of the
7 Foreign Intelligence Surveillance Act of
8 1978 to law enforcement authorities for
9 use in criminal proceedings.

10 ~~(3)~~ SUBMISSION DATES.—

11 (A) PRIOR YEARS.—Not later than Decem-
12 ber 31, 2010, the Inspector General of the De-
13 partment of Justice shall submit to the Com-
14 mittee on the Judiciary and the Select Com-
15 mittee on Intelligence of the Senate and the
16 Committee on the Judiciary and the Permanent
17 Select Committee on Intelligence of the House
18 of Representatives a report containing the re-
19 sults of the audit conducted under this section
20 for calendar years 2007 through 2009.

21 (B) CALENDAR YEARS 2010 THROUGH
22 2012.—Not later than December 31, 2011, and
23 every year thereafter through 2013, the Inspee-
24 tor General of the Department of Justice shall
25 submit to the Committee on the Judiciary and

1 the Select Committee on Intelligence of the
2 Senate and the Committee on the Judiciary and
3 the Permanent Select Committee on Intelligence
4 of the House of Representatives a report con-
5 taining the results of the audit conducted under
6 this section for the previous calendar year.

7 (4) PRIOR NOTICE TO ATTORNEY GENERAL AND
8 DIRECTOR OF NATIONAL INTELLIGENCE; COM-
9 MENTS.—

10 (A) NOTICE.—Not less than 30 days be-
11 fore the submission of a report under subpara-
12 graph (A) or (B) of paragraph (3), the Inspec-
13 tor General of the Department of Justice shall
14 provide the report to the Attorney General and
15 the Director of National Intelligence.

16 (B) COMMENTS.—The Attorney General or
17 the Director of National Intelligence may pro-
18 vide such comments to be included in a report
19 submitted under subparagraph (A) or (B) of
20 paragraph (3) as the Attorney General or the
21 Director of National Intelligence may consider
22 necessary.

23 (5) UNCLASSIFIED FORM.—A report submitted
24 under subparagraph (A) or (B) of paragraph (3)
25 and any comments included under paragraph (4)(B)

1 shall be in unclassified form, but may include a clas-
 2 sified annex.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “USA PATRIOT Act*
 5 *Sunset Extension Act of 2009”.*

6 **SEC. 2. SUNSETS.**

7 (a) *SECTIONS 206 AND 215 SUNSET.—*

8 (1) *IN GENERAL.—Section 102(b)(1) of the USA*
 9 *PATRIOT Improvement and Reauthorization Act of*
 10 *2005 (Public Law 109–177; 50 U.S.C. 1805 note, 50*
 11 *U.S.C. 1861 note, and 50 U.S.C. 1862 note) is*
 12 *amended by striking “2009” and inserting “2013”.*

13 (2) *CONFORMING AMENDMENTS.—*

14 (A) *IN GENERAL.—The Foreign Intelligence*
 15 *Surveillance Act of 1978 (50 U.S.C. 1801 et*
 16 *seq.), as amended by section 3 of this Act, is*
 17 *amended—*

18 (i) *in the table of contents in the first*
 19 *section, by striking the items relating to*
 20 *title V and sections 501, 502, and 503 and*
 21 *inserting the following:*

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES

“Sec. 501. Definitions.

“Sec. 502. Access to certain business records for foreign intelligence and inter-
national terrorism investigations.”;

1 (ii) in title V (50 U.S.C. 1861 et
2 seq.)—

3 (I) in the title heading, by strik-
4 ing “AND OTHER TANGIBLE
5 THINGS”; and

6 (II) by striking section 503; and

7 (iii) in section 601(a)(1)(D) (50
8 U.S.C. 1871(a)(1)(D)), by striking “section
9 501;” and inserting “section 502 or under
10 section 501 pursuant to section 102(b)(2) of
11 the USA PATRIOT Improvement and Re-
12 authorization Act of 2005 (Public Law
13 109–177; 50 U.S.C. 1861 note);”.

14 (B) APPLICATION UNDER SECTION 404 OF
15 THE FISA AMENDMENTS ACT OF 2008.—Section
16 404(b)(4)(A) of the FISA Amendments Act of
17 2008 (Public Law 110–261; 122 Stat. 2477) is
18 amended by striking the period at the end and
19 inserting “, except that paragraph (1)(D) of such
20 section 601(a) shall be applied as if it read as
21 follows:

22 “(D) access to records under section 502 or
23 under section 501 pursuant to section 102(b)(2)
24 of the USA PATRIOT Improvement and Reau-

1 *thorization Act of 2005 (Public Law 109–177; 50*
2 *U.S.C. 1861 note);’.*”.

3 (C) *EFFECTIVE DATE.*—*The amendments*
4 *made by this paragraph shall take effect on De-*
5 *cember 31, 2013.*

6 (b) *EXTENSION OF SUNSET RELATING TO INDIVIDUAL*
7 *TERRORISTS AS AGENTS OF FOREIGN POWERS.*—

8 (1) *IN GENERAL.*—*Section 6001(b) of the Intel-*
9 *ligence Reform and Terrorism Prevention Act of 2004*
10 *(Public Law 108–458; 50 U.S.C. 1801 note) is*
11 *amended to read as follows:*

12 “(b) *SUNSET.*—

13 “(1) *REPEAL.*—*Subparagraph (C) of section*
14 *101(b)(1) of the Foreign Intelligence Surveillance Act*
15 *of 1978 (50 U.S.C. 1801(b)(1)), as added by sub-*
16 *section (a), is repealed effective December 31, 2013.*

17 “(2) *TRANSITION PROVISION.*—*Notwithstanding*
18 *paragraph (1), subparagraph (C) of section 101(b)(1)*
19 *of the Foreign Intelligence Surveillance Act of 1978*
20 *(50 U.S.C. 1801(b)(1)) shall continue to apply on and*
21 *after December 31, 2013, with respect to any par-*
22 *ticular foreign intelligence investigation or with re-*
23 *spect to any particular offense or potential offense*
24 *that began or occurred before December 31, 2013.”.*

25 (2) *CONFORMING AMENDMENT.*—

1 (A) *IN GENERAL.*—Section 601(a)(2) of the
2 *Foreign Intelligence Surveillance Act of 1978 (50*
3 *U.S.C. 1871(a)(2)) is amended by striking the*
4 *semicolon at the end and inserting “pursuant to*
5 *subsection (b)(2) of section 6001 of the Intel-*
6 *ligence Reform and Terrorism Prevention Act of*
7 *2004 (Public Law 108–458; 50 U.S.C. 1801*
8 *note);”.*

9 (B) *EFFECTIVE DATE.*—The amendment
10 made by subparagraph (A) shall take effect on
11 December 31, 2013.

12 (c) *NATIONAL SECURITY LETTERS.*—

13 (1) *REPEAL.*—Effective on December 31, 2013—

14 (A) section 2709 of title 18, United States
15 Code, is amended to read as such provision read
16 on October 25, 2001;

17 (B) section 1114(a)(5) of the *Right to Fi-*
18 *nancial Privacy Act of 1978 (12 U.S.C.*
19 *3414(a)(5)) is amended to read as such provision*
20 *read on October 25, 2001;*

21 (C) subsections (a) and (b) of section 626 of
22 the *Fair Credit Reporting Act (15 U.S.C. 1681u)*
23 are amended to read as subsections (a) and (b),
24 respectively, of section 624 of such Act read on
25 October 25, 2001;

1 (D) section 627 of the Fair Credit Report-
2 ing Act (15 U.S.C. 1681v) is repealed; and

3 (E) section 802 of the National Security Act
4 of 1947 (50 U.S.C. 436) is amended to read as
5 such provision read on October 25, 2001.

6 (2) *TRANSITION PROVISION.*—Notwithstanding
7 paragraph (1), the provisions of law referred to in
8 paragraph (1), as in effect on December 30, 2013,
9 shall continue to apply on and after December 31,
10 2013, with respect to any particular foreign intel-
11 ligence investigation or with respect to any particular
12 offense or potential offense that began or occurred be-
13 fore December 31, 2013.

14 (3) *TECHNICAL AND CONFORMING AMEND-*
15 *MENTS.*—Effective December 31, 2013—

16 (A) section 3511 of title 18, United States
17 Code, is amended—

18 (i) in subsections (a), (c), and (d), by
19 striking “or 627(a)” each place it appears;
20 and

21 (ii) in subsection (b)(1)(A), as amend-
22 ed by section 6(b) of this Act, by striking
23 “section 626 or 627 of the Fair Credit Re-
24 porting Act (15 U.S.C. 1681u and 1681v)”

1 and inserting “section 626 of the Fair Credit
2 Reporting Act (15 U.S.C. 1681u)”;

3 (B) section 118(c) of the USA PATRIOT
4 Improvement and Reauthorization Act of 2005
5 (18 U.S.C. 3511 note) is amended—

6 (i) in subparagraph (C), by adding
7 “and” at the end;

8 (ii) in subparagraph (D), by striking
9 “; and” and inserting a period; and

10 (iii) by striking subparagraph (E);

11 and

12 (C) the table of sections for the Fair Credit
13 Reporting Act (15 U.S.C. 1681 et seq.) is amend-
14 ed by striking the item relating to section 627.

15 **SEC. 3. ORDERS FOR ACCESS TO CERTAIN BUSINESS**

16 **RECORDS AND TANGIBLE THINGS.**

17 (a) *IN GENERAL.*—Section 501 of the Foreign Intel-
18 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is amend-
19 ed—

20 (1) in the section heading, by inserting “**AND**
21 **OTHER TANGIBLE THINGS**” after “**CERTAIN**
22 **BUSINESS RECORDS**”;

23 (2) in subsection (b)(2)—

24 (A) in subparagraph (A)—

1 (i) by striking “a statement of facts
2 showing” and inserting “a statement of the
3 facts and circumstances relied upon by the
4 applicant to justify the belief of the appli-
5 cant”; and

6 (ii) by striking “clandestine intel-
7 ligence activities,” and all that follows and
8 inserting “clandestine intelligence activi-
9 ties;”; and

10 (B) by striking subparagraph (B) and in-
11 serting the following:

12 “(B) if the records sought are the circula-
13 tion records or patron lists of a library (as de-
14 fined in section 213(1) of the Library Services
15 and Technology Act (20 U.S.C. 9122(1))), a
16 statement of facts showing that there are reason-
17 able grounds to believe that the records sought—

18 “(i) are relevant to an authorized in-
19 vestigation (other than a threat assessment)
20 conducted in accordance with subsection
21 (a)(2) to obtain foreign intelligence infor-
22 mation not concerning a United States per-
23 son or to protect against international ter-
24 rorism or clandestine intelligence activities;
25 and

1 “(i)(I) pertain to a foreign power or
2 an agent of a foreign power;

3 “(II) are relevant to the activities of a
4 suspected agent of a foreign power who is
5 the subject of such authorized investigation;
6 or

7 “(III) pertain to an individual in con-
8 tact with, or known to, a suspected agent of
9 a foreign power; and

10 “(C) a statement of proposed minimization
11 procedures.”; and

12 (3) in subsection (c)—

13 (A) in paragraph (1)—

14 (i) by inserting “and that the proposed
15 minimization procedures meet the definition
16 of minimization procedures under sub-
17 section (g)” after “subsections (a) and (b)”;
18 and

19 (ii) by striking the second sentence;
20 and

21 (B) in paragraph (2)—

22 (i) in subparagraph (D), by striking
23 “and” at the end;

1 (ii) in subparagraph (E), by striking
2 the period at the end and inserting “; and”;
3 and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(F) shall direct that the minimization pro-
7 cedures be followed.”.

8 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—

9 (1) *DEFINITIONS.*—Title V of the Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1861 et
11 seq.) is amended by adding at the end the following:

12 **“SEC. 503. DEFINITIONS.**

13 *“In this title, the terms ‘Attorney General’, ‘foreign in-*
14 *telligence information’, ‘international terrorism’, ‘person’,*
15 *‘United States’, and ‘United States person’ have the mean-*
16 *ings given such terms in section 101.”.*

17 (2) *TITLE HEADING.*—Title V of the Foreign In-
18 telligence Surveillance Act of 1978 (50 U.S.C. 1861 et
19 seq.) is amended in the title heading by inserting
20 “AND OTHER TANGIBLE THINGS” after “CER-
21 TAIN BUSINESS RECORDS”.

22 (3) *TABLE OF CONTENTS.*—The table of contents
23 in the first section of the Foreign Intelligence Surveil-
24 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amend-
25 ed—

1 (A) by striking the items relating to title V
2 and section 501 and inserting the following:

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS AND OTHER
TANGIBLE THINGS FOR FOREIGN INTELLIGENCE PURPOSES

“Sec. 501. Access to certain business records and other tangible things for foreign
intelligence purposes and international terrorism investiga-
tions.”; and

3 (B) by inserting after the item relating to
4 section 502 the following:

“Sec. 503. Definitions.”.

5 **SEC. 4. ORDERS FOR PEN REGISTERS AND TRAP AND**
6 **TRACE DEVICES FOR FOREIGN INTEL-**
7 **LIGENCE PURPOSES.**

8 (a) *APPLICATION.*—Section 402(c) of the Foreign In-
9 telligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is
10 amended—

11 (1) in paragraph (1), by striking “and” at the
12 end;

13 (2) in paragraph (2)—

14 (A) by striking “a certification by the ap-
15 plicant” and inserting “a statement of the facts
16 and circumstances relied upon by the applicant
17 to justify the belief of the applicant”; and

18 (B) by striking the period at the end and
19 inserting “; and”; and

20 (3) by adding at the end the following:

1 “(3) a statement of whether minimization proce-
2 dures are being proposed and, if so, a statement of the
3 proposed minimization procedures.”.

4 (b) MINIMIZATION.—

5 (1) DEFINITION.—Section 401 of the Foreign In-
6 telligence Surveillance Act of 1978 (50 U.S.C. 1841)
7 is amended by adding at the end the following:

8 “(4) The term ‘minimization procedures’
9 means—

10 “(A) specific procedures, that are reason-
11 ably designed in light of the purpose and tech-
12 nique of an order for the installation and use of
13 a pen register or trap and trace device, to mini-
14 mize the retention, and prohibit the dissemina-
15 tion, of nonpublicly available information known
16 to concern unconsenting United States persons
17 consistent with the need of the United States to
18 obtain, produce, and disseminate foreign intel-
19 ligence information;

20 “(B) procedures that require that nonpub-
21 licly available information, which is not foreign
22 intelligence information shall not be dissemi-
23 nated in a manner that identifies any United
24 States person, without such person’s consent, un-
25 less such person’s identity is necessary to under-

1 stand foreign intelligence information or assess
2 its importance; and

3 “(C) notwithstanding subparagraphs (A)
4 and (B), procedures that allow for the retention
5 and dissemination of information that is evi-
6 dence of a crime which has been, is being, or is
7 about to be committed and that is to be retained
8 or disseminated for law enforcement purposes.”.

9 (2) *PEN REGISTERS AND TRAP AND TRACE DE-*
10 *VICES.*—Section 402 of the *Foreign Intelligence Sur-*
11 *veillance Act of 1978 (50 U.S.C. 1842)* is amended—

12 (A) in subsection (d)—

13 (i) in paragraph (1), by inserting “,
14 and if, in exceptional circumstances, mini-
15 mization procedures are ordered, that the
16 proposed minimization procedures meet the
17 definition of minimization procedures
18 under this title” before the period at the
19 end; and

20 (ii) in paragraph (2)(B)—

21 (I) in clause (ii)(II), by striking
22 “and” after the semicolon; and

23 (II) by adding at the end the fol-
24 lowing:

1 “(iv) if applicable, the minimization
2 procedures be followed; and”;

3 (B) by adding at the end the following:

4 “(h) At or before the end of the period of time for which
5 the installation and use of a pen register or trap and trace
6 device is approved under an order or an extension under
7 this section, the judge may assess compliance with any ap-
8 plicable minimization procedures by reviewing the cir-
9 cumstances under which information concerning United
10 States persons was retained or disseminated.”.

11 (3) *EMERGENCIES.*—Section 403 of the Foreign
12 Intelligence Surveillance Act of 1978 (50 U.S.C.
13 1843) is amended—

14 (A) by redesignating subsection (c) as sub-
15 section (d); and

16 (B) by inserting after subsection (b) the fol-
17 lowing:

18 “(c) If the Attorney General authorizes the emergency
19 installation and use of a pen register or trap and trace
20 device under this section, the Attorney General shall require
21 that minimization procedures be followed, if appropriate.”.

22 (4) *USE OF INFORMATION.*—Section 405(a)(1) of
23 the Foreign Intelligence Surveillance Act of 1978 (50
24 U.S.C. 1845(a)(1)) is amended by striking “provi-

1 *sions of this section” and inserting “minimization*
2 *procedures required under this title”.*

3 **SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECU-**
4 **RITY LETTERS.**

5 *(a) IN GENERAL.—Section 2709 of title 18, United*
6 *States Code, is amended by striking subsection (c) and in-*
7 *serting the following:*

8 *“(c) PROHIBITION OF CERTAIN DISCLOSURE.—*

9 *“(1) PROHIBITION.—*

10 *“(A) IN GENERAL.—If a certification is*
11 *issued under subparagraph (B) and notice of the*
12 *right to judicial review under paragraph (3) is*
13 *provided, no wire or electronic communication*
14 *service provider, or officer, employee, or agent*
15 *thereof, that receives a request under subsection*
16 *(a), shall disclose to any person that the Director*
17 *of the Federal Bureau of Investigation has*
18 *sought or obtained access to information or*
19 *records under this section.*

20 *“(B) CERTIFICATION.—The requirements of*
21 *subparagraph (A) shall apply if the Director of*
22 *the Federal Bureau of Investigation, or a des-*
23 *ignee of the Director whose rank shall be no*
24 *lower than Deputy Assistant Director at Bureau*
25 *headquarters or a Special Agent in Charge of a*

1 *Bureau field office, certifies that, absent a prohi-*
2 *bition of disclosure under this subsection, there*
3 *may result—*

4 *“(i) a danger to the national security*
5 *of the United States;*

6 *“(ii) interference with a criminal,*
7 *counterterrorism, or counterintelligence in-*
8 *vestigation;*

9 *“(iii) interference with diplomatic re-*
10 *lations; or*

11 *“(iv) danger to the life or physical*
12 *safety of any person.*

13 *“(2) EXCEPTION.—*

14 *“(A) IN GENERAL.—A wire or electronic*
15 *communication service provider, or officer, em-*
16 *ployee, or agent thereof, that receives a request*
17 *under subsection (a) may disclose information*
18 *otherwise subject to any applicable nondisclosure*
19 *requirement to—*

20 *“(i) those persons to whom disclosure*
21 *is necessary in order to comply with the re-*
22 *quest;*

23 *“(ii) an attorney in order to obtain*
24 *legal advice or assistance regarding the re-*
25 *quest; or*

1 “(iii) other persons as permitted by the
2 Director of the Federal Bureau of Investiga-
3 tion or the designee of the Director.

4 “(B) PERSONS NECESSARY FOR COMPLI-
5 ANCE.—Upon a request by the Director of the
6 Federal Bureau of Investigation or the designee
7 of the Director, those persons to whom disclosure
8 will be made under subparagraph (A)(i) or to
9 whom such disclosure was made before the re-
10 quest shall be identified to the Director or the
11 designee.

12 “(C) NONDISCLOSURE REQUIREMENT.—A
13 person to whom disclosure is made under sub-
14 paragraph (A) shall be subject to the nondisclo-
15 sure requirements applicable to a person to
16 whom a request is issued under subsection (a) in
17 the same manner as the person to whom the re-
18 quest is issued.

19 “(D) NOTICE.—Any recipient that discloses
20 to a person described in subparagraph (A) infor-
21 mation otherwise subject to a nondisclosure re-
22 quirement shall inform the person of the applica-
23 ble nondisclosure requirement.

24 “(3) RIGHT TO JUDICIAL REVIEW.—

1 “(A) *IN GENERAL.*—A wire or electronic
2 communications service provider that receives a
3 request under subsection (a) shall have the right
4 to judicial review of any applicable nondisclo-
5 sure requirement.

6 “(B) *NOTIFICATION.*—A request under sub-
7 section (a) shall state that if the recipient wishes
8 to have a court review a nondisclosure require-
9 ment, the recipient shall notify the Government.

10 “(C) *INITIATION OF PROCEEDINGS.*—If a re-
11 cipient of a request under subsection (a) makes
12 a notification under subparagraph (B), the Gov-
13 ernment shall initiate judicial review under the
14 procedures established in section 3511 of this
15 title, unless an appropriate official of the Fed-
16 eral Bureau of the Investigation makes a notifi-
17 cation under paragraph (4).

18 “(4) *TERMINATION.*—In the case of any request
19 for which a recipient has submitted a notification
20 under paragraph (3)(B), if the facts supporting a
21 nondisclosure requirement cease to exist, an appro-
22 priate official of the Federal Bureau of Investigation
23 shall promptly notify the wire or electronic service
24 provider, or officer, employee, or agent thereof, subject

1 to the nondisclosure requirement that the nondisclo-
2 sure requirement is no longer in effect.”.

3 (b) *IDENTITY OF FINANCIAL INSTITUTIONS AND CRED-*
4 *IT REPORTS.*—Section 626 of the Fair Credit Reporting Act
5 (15 U.S.C. 1681u) is amended by striking subsection (d)
6 and inserting the following:

7 “(d) *PROHIBITION OF CERTAIN DISCLOSURE.*—

8 “(1) *PROHIBITION.*—

9 “(A) *IN GENERAL.*—If a certification is
10 issued under subparagraph (B) and notice of the
11 right to judicial review under paragraph (3) is
12 provided, no consumer reporting agency, or offi-
13 cer, employee, or agent thereof, that receives a re-
14 quest or order under subsection (a), (b), or (c),
15 shall disclose or specify in any consumer report,
16 that the Federal Bureau of Investigation has
17 sought or obtained access to information or
18 records under subsection (a), (b), or (c).

19 “(B) *CERTIFICATION.*—The requirements of
20 subparagraph (A) shall apply if the Director of
21 the Federal Bureau of Investigation, or a des-
22 ignee of the Director whose rank shall be no
23 lower than Deputy Assistant Director at Bureau
24 headquarters or a Special Agent in Charge of a
25 Bureau field office, certifies that, absent a prohi-

1 *bition of disclosure under this subsection, there*
2 *may result—*

3 *“(i) a danger to the national security*
4 *of the United States;*

5 *“(ii) interference with a criminal,*
6 *counterterrorism, or counterintelligence in-*
7 *vestigation;*

8 *“(iii) interference with diplomatic re-*
9 *lations; or*

10 *“(iv) danger to the life or physical*
11 *safety of any person.*

12 *“(2) EXCEPTION.—*

13 *“(A) IN GENERAL.—A consumer reporting*
14 *agency, or officer, employee, or agent thereof,*
15 *that receives a request or order under subsection*
16 *(a), (b), or (c) may disclose information other-*
17 *wise subject to any applicable nondisclosure re-*
18 *quirement to—*

19 *“(i) those persons to whom disclosure*
20 *is necessary in order to comply with the re-*
21 *quest or order;*

22 *“(ii) an attorney in order to obtain*
23 *legal advice or assistance regarding the re-*
24 *quest or order; or*

1 “(iii) other persons as permitted by the
2 Director of the Federal Bureau of Investiga-
3 tion or the designee of the Director.

4 “(B) PERSONS NECESSARY FOR COMPLI-
5 ANCE.—Upon a request by the Director of the
6 Federal Bureau of Investigation or the designee
7 of the Director, those persons to whom disclosure
8 will be made under subparagraph (A)(i) or to
9 whom such disclosure was made before the re-
10 quest shall be identified to the Director or the
11 designee.

12 “(C) NONDISCLOSURE REQUIREMENT.—A
13 person to whom disclosure is made under sub-
14 paragraph (A) shall be subject to the nondisclo-
15 sure requirements applicable to a person to
16 whom a request or order is issued under sub-
17 section (a), (b), or (c) in the same manner as the
18 person to whom the request or order is issued.

19 “(D) NOTICE.—Any recipient that discloses
20 to a person described in subparagraph (A) infor-
21 mation otherwise subject to a nondisclosure re-
22 quirement shall inform the person of the applica-
23 ble nondisclosure requirement.

24 “(3) RIGHT TO JUDICIAL REVIEW.—

1 “(A) *IN GENERAL.*—A consumer reporting
2 agency that receives a request or order under
3 subsection (a), (b), or (c) shall have the right to
4 judicial review of any applicable nondisclosure
5 requirement.

6 “(B) *NOTIFICATION.*—A request or order
7 under subsection (a), (b), or (c) shall state that
8 if the recipient wishes to have a court review a
9 nondisclosure requirement, the recipient shall no-
10 tify the Government.

11 “(C) *INITIATION OF PROCEEDINGS.*—If a re-
12 cipient of a request or order under subsection
13 (a), (b), or (c) makes a notification under sub-
14 paragraph (B), the Government shall initiate ju-
15 dicial review under the procedures established in
16 section 3511 of title 18, United States Code, un-
17 less an appropriate official of the Federal Bu-
18 reau of Investigation makes a notification under
19 paragraph (4).

20 “(4) *TERMINATION.*—In the case of any request
21 or order for which a consumer reporting agency has
22 submitted a notification under paragraph (3)(B), if
23 the facts supporting a nondisclosure requirement cease
24 to exist, an appropriate official of the Federal Bureau
25 of Investigation shall promptly notify the consumer

1 *reporting agency, or officer, employee, or agent there-*
2 *of, subject to the nondisclosure requirement that the*
3 *nondisclosure requirement is no longer in effect.”.*

4 *(c) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR*
5 *COUNTERTERRORISM PURPOSES.—Section 627 of the Fair*
6 *Credit Reporting Act (15 U.S.C. 1681v) is amended by*
7 *striking subsection (c) and inserting the following:*

8 *“(c) PROHIBITION OF CERTAIN DISCLOSURE.—*

9 *“(1) PROHIBITION.—*

10 *“(A) IN GENERAL.—If a certification is*
11 *issued under subparagraph (B) and notice of the*
12 *right to judicial review under paragraph (3) is*
13 *provided, no consumer reporting agency, or offi-*
14 *cer, employee, or agent thereof, that receives a re-*
15 *quest under subsection (a), shall disclose to any*
16 *person or specify in any consumer report, that*
17 *a government agency has sought or obtained ac-*
18 *cess to information under subsection (a).*

19 *“(B) CERTIFICATION.—The requirements of*
20 *subparagraph (A) shall apply if the head of a*
21 *government agency authorized to conduct inves-*
22 *tigations of, or intelligence or counterintelligence*
23 *activities or analysis related to, international*
24 *terrorism, or a designee, certifies that, absent a*

1 prohibition of disclosure under this subsection,
2 there may result—

3 “(i) a danger to the national security
4 of the United States;

5 “(ii) interference with a criminal,
6 counterterrorism, or counterintelligence in-
7 vestigation;

8 “(iii) interference with diplomatic re-
9 lations; or

10 “(iv) danger to the life or physical
11 safety of any person.

12 “(2) EXCEPTION.—

13 “(A) IN GENERAL.—A consumer reporting
14 agency, or officer, employee, or agent thereof,
15 that receives a request under subsection (a) may
16 disclose information otherwise subject to any ap-
17 plicable nondisclosure requirement to—

18 “(i) those persons to whom disclosure
19 is necessary in order to comply with the re-
20 quest;

21 “(ii) an attorney in order to obtain
22 legal advice or assistance regarding the re-
23 quest; or

24 “(iii) other persons as permitted by the
25 head of the government agency authorized to

1 *conduct investigations of, or intelligence or*
2 *counterintelligence activities or analysis re-*
3 *lated to, international terrorism, or a des-*
4 *ignee.*

5 “(B) *PERSONS NECESSARY FOR COMPLI-*
6 *ANCE.—Upon a request by the head of a govern-*
7 *ment agency authorized to conduct investigations*
8 *of, or intelligence or counterintelligence activities*
9 *or analysis related to, international terrorism, or*
10 *a designee, those persons to whom disclosure will*
11 *be made under subparagraph (A)(i) or to whom*
12 *such disclosure was made before the request shall*
13 *be identified to the head of the government agen-*
14 *cy or the designee.*

15 “(C) *NONDISCLOSURE REQUIREMENT.—A*
16 *person to whom disclosure is made under sub-*
17 *paragraph (A) shall be subject to the nondisclo-*
18 *sure requirements applicable to a person to*
19 *whom a request is issued under subsection (a) in*
20 *the same manner as the person to whom the re-*
21 *quest is issued.*

22 “(D) *NOTICE.—Any recipient that discloses*
23 *to a person described in subparagraph (A) infor-*
24 *mation otherwise subject to a nondisclosure re-*

1 *quirement shall inform the person of the applica-*
2 *ble nondisclosure requirement.*

3 “(3) *RIGHT TO JUDICIAL REVIEW.*—

4 “(A) *IN GENERAL.*—*A consumer reporting*
5 *agency that receives a request under subsection*
6 *(a) shall have the right to judicial review of any*
7 *applicable nondisclosure requirement.*

8 “(B) *NOTIFICATION.*—*A request under sub-*
9 *section (a) shall state that if the recipient wishes*
10 *to have a court review a nondisclosure require-*
11 *ment, the recipient shall notify the government.*

12 “(C) *INITIATION OF PROCEEDINGS.*—*If a re-*
13 *recipient of a request under subsection (a) makes*
14 *a notification under subparagraph (B), the gov-*
15 *ernment shall initiate judicial review under the*
16 *procedures established in section 3511 of title 18,*
17 *United States Code, unless an appropriate offi-*
18 *cial of the government agency authorized to con-*
19 *duct investigations of, or intelligence or counter-*
20 *intelligence activities or analysis related to,*
21 *international terrorism makes a notification*
22 *under paragraph (4).*

23 “(4) *TERMINATION.*—*In the case of any request*
24 *for which a consumer reporting agency has submitted*
25 *a notification under paragraph (3)(B), if the facts*

1 *supporting a nondisclosure requirement cease to exist,*
2 *an appropriate official of the government agency au-*
3 *thorized to conduct investigations of, or intelligence or*
4 *counterintelligence activities or analysis related to,*
5 *international terrorism shall promptly notify the con-*
6 *sumer reporting agency, or officer, employee, or agent*
7 *thereof, subject to the nondisclosure requirement that*
8 *the nondisclosure requirement is no longer in effect.”.*

9 *(d) FINANCIAL RECORDS.—Section 1114(a)(5) of the*
10 *Right to Financial Privacy Act of 1978 (12 U.S.C.*
11 *3414(a)(5)) is amended by striking subparagraph (D) and*
12 *inserting the following:*

13 “(D) PROHIBITION OF CERTAIN DISCLOSURE.—

14 “(i) PROHIBITION.—

15 “(I) IN GENERAL.—If a certification is
16 *issued under subclause (II) and notice of the*
17 *right to judicial review under clause (iii) is pro-*
18 *vided, no financial institution, or officer, em-*
19 *ployee, or agent thereof, that receives a request*
20 *under subparagraph (A), shall disclose to any*
21 *person that the Federal Bureau of Investigation*
22 *has sought or obtained access to information or*
23 *records under subparagraph (A).*

24 “(II) CERTIFICATION.—The requirements of
25 *subclause (I) shall apply if the Director of the*

1 *Federal Bureau of Investigation, or a designee of*
2 *the Director whose rank shall be no lower than*
3 *Deputy Assistant Director at Bureau head-*
4 *quarters or a Special Agent in Charge of a Bu-*
5 *reau field office, certifies that, absent a prohibi-*
6 *tion of disclosure under this subparagraph, there*
7 *may result—*

8 “(aa) *a danger to the national security*
9 *of the United States;*

10 “(bb) *interference with a criminal,*
11 *counterterrorism, or counterintelligence in-*
12 *vestigation;*

13 “(cc) *interference with diplomatic rela-*
14 *tions; or*

15 “(dd) *danger to the life or physical*
16 *safety of any person.*

17 “(ii) *EXCEPTION.—*

18 “(I) *IN GENERAL.—A financial institution,*
19 *or officer, employee, or agent thereof, that re-*
20 *ceives a request under subparagraph (A) may*
21 *disclose information otherwise subject to any ap-*
22 *plicable nondisclosure requirement to—*

23 “(aa) *those persons to whom disclosure*
24 *is necessary in order to comply with the re-*
25 *quest;*

1 “(bb) an attorney in order to obtain
2 legal advice or assistance regarding the re-
3 quest; or

4 “(cc) other persons as permitted by the
5 Director of the Federal Bureau of Investiga-
6 tion or the designee of the Director.

7 “(II) *PERSONS NECESSARY FOR COMPLI-*
8 *ANCE.*—Upon a request by the Director of the
9 Federal Bureau of Investigation or the designee
10 of the Director, those persons to whom disclosure
11 will be made under subclause (I)(aa) or to whom
12 such disclosure was made before the request shall
13 be identified to the Director or the designee.

14 “(III) *NONDISCLOSURE REQUIREMENT.*—A
15 person to whom disclosure is made under sub-
16 clause (I) shall be subject to the nondisclosure re-
17 quirements applicable to a person to whom a re-
18 quest is issued under subparagraph (A) in the
19 same manner as the person to whom the request
20 is issued.

21 “(IV) *NOTICE.*—Any recipient that discloses
22 to a person described in subclause (I) informa-
23 tion otherwise subject to a nondisclosure require-
24 ment shall inform the person of the applicable
25 nondisclosure requirement.

1 “(iii) *RIGHT TO JUDICIAL REVIEW.*—

2 “(I) *IN GENERAL.*—*A financial institution*
3 *that receives a request under subparagraph (A)*
4 *shall have the right to judicial review of any ap-*
5 *licable nondisclosure requirement.*

6 “(II) *NOTIFICATION.*—*A request under sub-*
7 *paragraph (A) shall state that if the recipient*
8 *wishes to have a court review a nondisclosure re-*
9 *quirement, the recipient shall notify the Govern-*
10 *ment.*

11 “(III) *INITIATION OF PROCEEDINGS.*—*If a*
12 *recipient of a request under subparagraph (A)*
13 *makes a notification under subclause (II), the*
14 *Government shall initiate judicial review under*
15 *the procedures established in section 3511 of title*
16 *18, United States Code, unless an appropriate*
17 *official of the Federal Bureau of Investigation*
18 *makes a notification under clause (iv).*

19 “(iv) *TERMINATION.*—*In the case of any request*
20 *for which a financial institution has submitted a no-*
21 *tification under clause (iii)(II), if the facts sup-*
22 *porting a nondisclosure requirement cease to exist, an*
23 *appropriate official of the Federal Bureau of Inves-*
24 *tigation shall promptly notify the financial institu-*
25 *tion, or officer, employee, or agent thereof, subject to*

1 *the nondisclosure requirement that the nondisclosure*
2 *requirement is no longer in effect.”.*

3 *(e) REQUESTS BY AUTHORIZED INVESTIGATIVE AGEN-*
4 *CIES.—Section 802 of the National Security Act of 1947*
5 *(50 U.S.C. 436), is amended by striking subsection (b) and*
6 *inserting the following:*

7 “(b) *PROHIBITION OF CERTAIN DISCLOSURE.—*

8 “(1) *PROHIBITION.—*

9 “(A) *IN GENERAL.—If a certification is*
10 *issued under subparagraph (B) and notice of the*
11 *right to judicial review under paragraph (3) is*
12 *provided, no governmental or private entity, or*
13 *officer, employee, or agent thereof, that receives a*
14 *request under subsection (a), shall disclose to any*
15 *person that an authorized investigative agency*
16 *described in subsection (a) has sought or ob-*
17 *tained access to information under subsection*
18 *(a).*

19 “(B) *CERTIFICATION.—The requirements of*
20 *subparagraph (A) shall apply if the head of an*
21 *authorized investigative agency described in sub-*
22 *section (a), or a designee, certifies that, absent a*
23 *prohibition of disclosure under this subsection,*
24 *there may result—*

1 “(i) a danger to the national security
2 of the United States;

3 “(ii) interference with a criminal,
4 counterterrorism, or counterintelligence in-
5 vestigation;

6 “(iii) interference with diplomatic re-
7 lations; or

8 “(iv) danger to the life or physical
9 safety of any person.

10 “(2) EXCEPTION.—

11 “(A) IN GENERAL.—A governmental or pri-
12 vate entity, or officer, employee, or agent thereof,
13 that receives a request under subsection (a) may
14 disclose information otherwise subject to any ap-
15 plicable nondisclosure requirement to—

16 “(i) those persons to whom disclosure
17 is necessary in order to comply with the re-
18 quest;

19 “(ii) an attorney in order to obtain
20 legal advice or assistance regarding the re-
21 quest; or

22 “(iii) other persons as permitted by the
23 head of the authorized investigative agency
24 described in subsection (a).

1 “(B) *PERSONS NECESSARY FOR COMPLI-*
2 *ANCE.*—Upon a request by the head of an au-
3 *thorized investigative agency described in sub-*
4 *section (a), or a designee, those persons to whom*
5 *disclosure will be made under subparagraph*
6 *(A)(i) or to whom such disclosure was made be-*
7 *fore the request shall be identified to the head of*
8 *the authorized investigative agency or the des-*
9 *ignee.*

10 “(C) *NONDISCLOSURE REQUIREMENT.*—A
11 *person to whom disclosure is made under sub-*
12 *paragraph (A) shall be subject to the nondisclo-*
13 *sure requirements applicable to a person to*
14 *whom a request is issued under subsection (a) in*
15 *the same manner as the person to whom the re-*
16 *quest is issued.*

17 “(D) *NOTICE.*—Any recipient that discloses
18 *to a person described in subparagraph (A) infor-*
19 *mation otherwise subject to a nondisclosure re-*
20 *quirement shall inform the person of the applica-*
21 *ble nondisclosure requirement.*

22 “(3) *RIGHT TO JUDICIAL REVIEW.*—

23 “(A) *IN GENERAL.*—A governmental or pri-
24 *vate entity that receives a request under sub-*

1 *section (a) shall have the right to judicial review*
2 *of any applicable nondisclosure requirement.*

3 “(B) *NOTIFICATION.*—*A request under sub-*
4 *section (a) shall state that if the recipient wishes*
5 *to have a court review a nondisclosure require-*
6 *ment, the recipient shall notify the Government.*

7 “(C) *INITIATION OF PROCEEDINGS.*—*If a re-*
8 *recipient of a request under subsection (a) makes*
9 *a notification under subparagraph (B), the Gov-*
10 *ernment shall initiate judicial review under the*
11 *procedures established in section 3511 of title 18,*
12 *United States Code, unless an appropriate offi-*
13 *cial of the authorized investigative agency de-*
14 *scribed in subsection (a) makes a notification*
15 *under paragraph (4).*

16 “(4) *TERMINATION.*—*In the case of any request*
17 *for which a governmental or private entity has sub-*
18 *mitted a notification under paragraph (3)(B), if the*
19 *facts supporting a nondisclosure requirement cease to*
20 *exist, an appropriate official of the authorized inves-*
21 *tigative agency described in subsection (a) shall*
22 *promptly notify the governmental or private entity,*
23 *or officer, employee, or agent thereof, subject to the*
24 *nondisclosure requirement that the nondisclosure re-*
25 *quirement is no longer in effect.”.*

1 **SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL**
2 **SECURITY LETTERS.**

3 (a) *FISA*.—Section 501(f)(2) of the *Foreign Intel-*
4 *ligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2))* is
5 *amended—*

6 (1) *in subparagraph (A)—*

7 (A) *in clause (i)—*

8 (i) *by striking “a production order”*
9 *and inserting “a production order or non-*
10 *disclosure order”;* and

11 (ii) *by striking “Not less than 1 year”*
12 *and all that follows;* and

13 (B) *in clause (ii), by striking “production*
14 *order or nondisclosure”;* and

15 (2) *in subparagraph (C)—*

16 (A) *by striking clause (ii); and*

17 (B) *by redesignating clause (iii) as clause*
18 *(ii).*

19 (b) *JUDICIAL REVIEW OF NATIONAL SECURITY LET-*
20 *TERS.*—Section 3511(b) of title 18, *United States Code*, is
21 *amended to read as follows:*

22 “(b) *NONDISCLOSURE.*—

23 “(1) *IN GENERAL.*—

24 “(A) *NOTICE.*—*If a recipient of a request or*
25 *order for a report, records, or other information*
26 *under section 2709 of this title, section 626 or*

1 627 of the Fair Credit Reporting Act (15 U.S.C.
2 1681u and 1681v), section 1114 of the Right to
3 Financial Privacy Act of 1978 (12 U.S.C. 3414),
4 or section 802 of the National Security Act of
5 1947 (50 U.S.C. 436), wishes to have a court re-
6 view a nondisclosure requirement imposed in
7 connection with the request or order, the recipi-
8 ent shall notify the Government.

9 “(B) APPLICATION.—Not later than 30 days
10 after the date of receipt of a notification under
11 subparagraph (A), the Government shall apply
12 for an order prohibiting the disclosure of the ex-
13 istence or contents of the relevant request or
14 order. An application under this subparagraph
15 may be filed in the district court of the United
16 States for any district within which the author-
17 ized investigation that is the basis for the request
18 or order is being conducted. The applicable non-
19 disclosure requirement shall remain in effect
20 during the pendency of proceedings relating to
21 the requirement.

22 “(C) CONSIDERATION.—A district court of
23 the United States that receives an application
24 under subparagraph (B) should rule expedi-
25 tiously, and shall, subject to paragraph (3), issue

1 *a nondisclosure order that includes conditions*
2 *appropriate to the circumstances.*

3 “(2) *APPLICATION CONTENTS.*—*An application*
4 *for a nondisclosure order or extension thereof under*
5 *this subsection shall include a certification from the*
6 *Attorney General, Deputy Attorney General, an As-*
7 *stant Attorney General, or the Director of the Fed-*
8 *eral Bureau of Investigation, or in the case of a re-*
9 *quest by a department, agency, or instrumentality of*
10 *the Federal Government other than the Department of*
11 *Justice, the head or deputy head of the department,*
12 *agency, or instrumentality, containing a statement of*
13 *specific and articulable facts indicating that, absent*
14 *a prohibition of disclosure under this subsection, there*
15 *may result—*

16 “(A) *a danger to the national security of*
17 *the United States;*

18 “(B) *interference with a criminal, counter-*
19 *terrorism, or counterintelligence investigation;*

20 “(C) *interference with diplomatic relations;*

21 *or*

22 “(D) *danger to the life or physical safety of*
23 *any person.*

24 “(3) *STANDARD.*—*A district court of the United*
25 *States shall issue a nondisclosure requirement order*

1 *or extension thereof under this subsection if the court*
2 *determines, giving substantial weight to the certifi-*
3 *cation under paragraph (2) that there is reason to be-*
4 *lieve that disclosure of the information subject to the*
5 *nondisclosure requirement during the applicable time*
6 *period will result in—*

7 *“(A) a danger to the national security of*
8 *the United States;*

9 *“(B) interference with a criminal, counter-*
10 *terrorism, or counterintelligence investigation;*

11 *“(C) interference with diplomatic relations;*

12 *or*

13 *“(D) danger to the life or physical safety of*
14 *any person.”.*

15 *(c) MINIMIZATION.—Section 501(g)(1) of the Foreign*
16 *Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(g)(1))*
17 *is amended by striking “Not later than” and all that follows*
18 *and inserting “At or before the end of the period of time*
19 *for the production of tangible things under an order ap-*
20 *proved under this section or at any time after the produc-*
21 *tion of tangible things under an order approved under this*
22 *section, a judge may assess compliance with the minimiza-*
23 *tion procedures by reviewing the circumstances under which*
24 *information concerning United States persons was retained*
25 *or disseminated.”.*

1 **SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL**
2 **AND TRANSACTIONAL RECORDS.**

3 (a) *IN GENERAL.*—Section 2709 of title 18, United
4 States Code, as amended by this Act, is amended—

5 (1) by redesignating subsections (c), (d), (e), and
6 (f) as subsections (d), (e), (f), and (g), respectively;
7 and

8 (2) by inserting after subsection (b) the fol-
9 lowing:

10 “(c) *WRITTEN STATEMENT.*—The Director of the Fed-
11 eral Bureau of Investigation, or a designee in a position
12 not lower than Deputy Assistant Director at Bureau head-
13 quarters or a Special Agent in Charge in a Bureau field
14 office designated by the Director, may make a certification
15 under subsection (b) only upon a written statement, which
16 shall be retained by the Federal Bureau of Investigation,
17 of specific facts showing that there are reasonable grounds
18 to believe that the information sought is relevant to the au-
19 thorized investigation described in subsection (b).”.

20 (b) *IDENTITY OF FINANCIAL INSTITUTIONS AND CRED-*
21 *IT REPORTS.*—Section 626 of the Fair Credit Reporting Act
22 (15 U.S.C. 1681u), as amended by this Act, is amended—

23 (1) by redesignating subsections (d) through (m)
24 as subsections (e) through (n), respectively; and

25 (2) by inserting after subsection (c) the fol-
26 lowing:

1 “(d) *WRITTEN STATEMENT.*—*The Director of the Fed-*
2 *eral Bureau of Investigation, or a designee in a position*
3 *not lower than Deputy Assistant Director at Bureau head-*
4 *quarters or a Special Agent in Charge in a Bureau field*
5 *office designated by the Director, may make a certification*
6 *under subsection (a) or (b) only upon a written statement,*
7 *which shall be retained by the Federal Bureau of Investiga-*
8 *tion, of specific facts showing that there are reasonable*
9 *grounds to believe that the information sought is relevant*
10 *to the authorized investigation described in subsection (a)*
11 *or (b), as the case may be.”.*

12 (c) *DISCLOSURES TO GOVERNMENTAL AGENCIES FOR*
13 *COUNTERTERRORISM PURPOSES.*—*Section 627(b) of the*
14 *Fair Credit Reporting Act (15 U.S.C. 1681v(b)) is amend-*
15 *ed—*

16 (1) *in the subsection heading, by striking “FORM*
17 *OF CERTIFICATION” and inserting “CERTIFICATION”;*

18 (2) *by striking “The certification” and inserting*
19 *the following:*

20 “(1) *FORM OF CERTIFICATION.*—*The certifi-*
21 *cation”;* *and*

22 (3) *by adding at the end the following:*

23 “(2) *WRITTEN STATEMENT.*—*A supervisory offi-*
24 *cial or officer described in paragraph (1) may make*
25 *a certification under subsection (a) only upon a writ-*

1 *ten statement, which shall be retained by the govern-*
2 *ment agency, of specific facts showing that there are*
3 *reasonable grounds to believe that the information*
4 *sought is relevant to the authorized investigation de-*
5 *scribed in subsection (a).”.*

6 *(d) FINANCIAL RECORDS.—Section 1114(a)(5) of the*
7 *Right to Financial Privacy Act of 1978 (12 U.S.C.*
8 *3414(a)(5)), as amended by this Act, is amended—*

9 *(1) by redesignating subparagraphs (B), (C),*
10 *and (D) as subparagraphs (C), (D), and (E), respec-*
11 *tively; and*

12 *(2) by inserting after subparagraph (A) the fol-*
13 *lowing:*

14 *“(B) The Director of the Federal Bureau of Investiga-*
15 *tion, or a designee in a position not lower than Deputy*
16 *Assistant Director at Bureau headquarters or a Special*
17 *Agent in Charge in a Bureau field office designated by the*
18 *Director, may make a certification under subparagraph (A)*
19 *only upon a written statement, which shall be retained by*
20 *the Federal Bureau of Investigation, of specific facts show-*
21 *ing that there are reasonable grounds to believe that the in-*
22 *formation sought is relevant to the authorized investigation*
23 *described in subparagraph (A).”.*

24 *(e) REQUESTS BY AUTHORIZED INVESTIGATIVE AGEN-*
25 *CIES.—Section 802(a) of the National Security Act of 1947*

1 *(50 U.S.C. 436(a)) is amended by adding at the end the*
2 *following:*

3 *“(4) A department or agency head, deputy department*
4 *or agency head, or senior official described in paragraph*
5 *(3)(A) may make a certification under paragraph (3)(A)*
6 *only upon a written statement, which shall be retained by*
7 *the authorized investigative agency, of specific facts showing*
8 *that there are reasonable grounds to believe that the infor-*
9 *mation sought is relevant to the authorized inquiry or in-*
10 *vestigation described in paragraph (3)(A)(ii).”.*

11 *(f) TECHNICAL AND CONFORMING AMENDMENTS.—*

12 *(1) OBSTRUCTION OF CRIMINAL INVESTIGA-*
13 *TIONS.—Section 1510(e) of title 18, United States*
14 *Code, is amended by striking “section 2709(c)(1) of*
15 *this title, section 626(d)(1) or 627(c)(1) of the Fair*
16 *Credit Reporting Act (15 U.S.C. 1681u(d)(1) or*
17 *1681v(c)(1)), section 1114(a)(3)(A) or*
18 *1114(a)(5)(D)(i) of the Right to Financial Privacy*
19 *Act (12 U.S.C. 3414(a)(3)(A) or 3414(a)(5)(D)(i)),”*
20 *and inserting “section 2709(d)(1) of this title, section*
21 *626(e)(1) or 627(c)(1) of the Fair Credit Reporting*
22 *Act (15 U.S.C. 1681u(e)(1) and 1681v(c)(1)), section*
23 *1114(a)(3)(A) or 1114(a)(5)(E)(i) of the Right to Fi-*
24 *nancial Privacy Act of 1978 (12 U.S.C.*
25 *3414(a)(3)(A) and 3414(a)(5)(E)(i)),”.*

1 (2) *SEMIANNUAL REPORTS*.—Section 507(b) of
2 *the National Security Act of 1947 (50 U.S.C.*
3 *415b(b)) is amended—*

4 (A) *in paragraph (4), by striking “section*
5 *624(h)(2) of the Fair Credit Reporting Act (15*
6 *U.S.C. 1681u(h)(2))” and inserting “section*
7 *626(i)(2) of the Fair Credit Reporting Act (15*
8 *U.S.C. 1681u(i)(2))”;* and

9 (B) *in paragraph (5), by striking “section*
10 *1114(a)(5)(C) of the Right to Financial Privacy*
11 *Act of 1978 (12 U.S.C. 3414(a)(5)(C))” and in-*
12 *serting “section 1114(a)(5)(D) of the Right to*
13 *Financial Privacy Act of 1978 (12 U.S.C.*
14 *3414(a)(5)(D))”.*

15 **SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LET-**
16 **TERS.**

17 *Section 118(c) of the USA PATRIOT Improvement*
18 *and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is*
19 *amended—*

20 (1) *in paragraph (1)—*

21 (A) *in the matter preceding subparagraph*
22 (A), *by striking “concerning different United*
23 *States persons”;* and

1 (B) in subparagraph (A), by striking “, ex-
2 cluding the number of requests for subscriber in-
3 formation”;

4 (2) by redesignating paragraph (2) as para-
5 graph (3); and

6 (3) by inserting after paragraph (1) the fol-
7 lowing:

8 “(2) *CONTENT.*—

9 “(A) *IN GENERAL.*—Except as provided in
10 subparagraph (B), each report required under
11 this subsection shall include the total number of
12 requests described in paragraph (1) requiring
13 disclosure of information concerning—

14 “(i) *United States persons;*

15 “(ii) *persons who are not United*
16 *States persons;*

17 “(iii) *persons who are the subjects of*
18 *authorized national security investigations;*

19 *or*

20 “(iv) *persons who are not the subjects*
21 *of authorized national security investiga-*
22 *tions.*

23 “(B) *EXCEPTION.*—With respect to the
24 number of requests for subscriber information
25 under section 2709 of title 18, United States

1 Code, a report required under this subsection
 2 need not provide information separated into each
 3 of the categories described in subparagraph
 4 (A).”.

5 **SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTEL-**
 6 **LIGENCE SURVEILLANCE ACT.**

7 Section 601 of the Foreign Intelligence Surveillance
 8 Act of 1978 (50 U.S.C. 1871) is amended—

9 (1) by redesignating subsections (b) through (e)
 10 as subsections (c) through (f), respectively;

11 (2) by inserting after subsection (a) the fol-
 12 lowing:

13 “(b) *PUBLIC REPORT.*—The Attorney General shall
 14 make publicly available the portion of each report under
 15 subsection (a) relating to paragraphs (1) and (2) of sub-
 16 section (a).”; and

17 (3) in subsection (e), as so redesignated, by strik-
 18 ing “subsection (c)” and inserting “subsection (d)”.

19 **SEC. 10. AUDITS.**

20 (a) *TANGIBLE THINGS.*—Section 106A of the USA PA-
 21 *TRIoT Improvement and Reauthorization Act of 2005*
 22 *(Public Law 109–177; 120 Stat. 200)* is amended—

23 (1) in subsection (b)—

24 (A) in paragraph (1), by striking “2006”
 25 and inserting “2011”; and

1 (B) in paragraph (5)(C), by striking “cal-
2 endar year 2006” and inserting “each of cal-
3 endar years 2006 through 2011”;

4 (2) in subsection (c), by adding at the end the
5 following:

6 “(3) CALENDAR YEARS 2007, 2008, AND 2009.—Not
7 later than June 30, 2011, the Inspector General of the
8 Department of Justice shall submit to the Committee
9 on the Judiciary and the Permanent Select Com-
10 mittee on Intelligence of the House of Representatives
11 and the Committee on the Judiciary and the Select
12 Committee on Intelligence of the Senate a report con-
13 taining the results of the audit conducted under this
14 section for calendar years 2007, 2008, and 2009.

15 “(4) CALENDAR YEARS 2010 AND 2011.—Not later
16 than December 31, 2012, the Inspector General of the
17 Department of Justice shall submit to the Committee
18 on the Judiciary and the Permanent Select Com-
19 mittee on Intelligence of the House of Representatives
20 and the Committee on the Judiciary and the Select
21 Committee on Intelligence of the Senate a report con-
22 taining the results of the audit conducted under this
23 section for calendar years 2010 and 2011.”;

24 (3) in subsection (d)—

1 (A) in paragraph (1), by striking “or
2 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
3 and

4 (B) in paragraph (2), by striking “and
5 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
6 and

7 (4) in subsection (e), by striking “and (c)(2)”
8 and inserting “(c)(2), (c)(3), or (c)(4)”.

9 (b) NATIONAL SECURITY LETTERS.—Section 119 of
10 the USA PATRIOT Improvement and Reauthorization Act
11 of 2005 (Public Law 109–177; 120 Stat. 219) is amended—

12 (1) in subsection (b)(1), by striking “2006” and
13 inserting “2011”;

14 (2) in subsection (c), by adding at the end the
15 following:

16 “(3) CALENDAR YEARS 2007, 2008, AND 2009.—Not
17 later than June 30, 2011, the Inspector General of the
18 Department of Justice shall submit to the Committee
19 on the Judiciary and the Permanent Select Com-
20 mittee on Intelligence of the House of Representatives
21 and the Committee on the Judiciary and the Select
22 Committee on Intelligence of the Senate a report con-
23 taining the results of the audit conducted under this
24 section for calendar years 2007, 2008, and 2009.

1 “(4) *CALENDAR YEARS 2010 AND 2011.*—Not later
2 *than December 31, 2012, the Inspector General of the*
3 *Department of Justice shall submit to the Committee*
4 *on the Judiciary and the Permanent Select Com-*
5 *mittee on Intelligence of the House of Representatives*
6 *and the Committee on the Judiciary and the Select*
7 *Committee on Intelligence of the Senate a report con-*
8 *taining the results of the audit conducted under this*
9 *section for calendar years 2010 and 2011.”;*

10 (3) *in subsection (d)*—

11 (A) *in paragraph (1), by striking “or*
12 *(c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;*
13 *and*

14 (B) *in paragraph (2), by striking “or*
15 *(c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;*
16 *and*

17 (4) *in subsection (e), by striking “or (c)(2)” and*
18 *inserting “(c)(2), (c)(3), or (c)(4)”.*

19 (c) *PEN REGISTERS AND TRAP AND TRACE DE-*
20 *VICES.*—

21 (1) *AUDITS.*—*The Inspector General of the De-*
22 *partment of Justice shall perform comprehensive au-*
23 *ditions of the effectiveness and use, including any im-*
24 *proper or illegal use, of pen registers and trap and*
25 *trace devices under title IV of the Foreign Intelligence*

1 *Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) dur-*
2 *ing the period beginning on January 1, 2007 and*
3 *ending on December 31, 2011.*

4 (2) *REQUIREMENTS.—The audits required under*
5 *paragraph (1) shall include—*

6 (A) *an examination of the use of pen reg-*
7 *isters and trap and trace devices under title IV*
8 *of the Foreign Intelligence Surveillance Act of*
9 *1978 for calendar years 2007 through 2011;*

10 (B) *an examination of the installation and*
11 *use of a pen register or trap and trace device on*
12 *emergency bases under section 403 of the Foreign*
13 *Intelligence Surveillance Act of 1978 (50 U.S.C.*
14 *1843);*

15 (C) *any noteworthy facts or circumstances*
16 *relating to the use of a pen register or trap and*
17 *trace device under title IV of the Foreign Intel-*
18 *ligence Surveillance Act of 1978, including any*
19 *improper or illegal use of the authority provided*
20 *under that title; and*

21 (D) *an examination of the effectiveness of*
22 *the authority under title IV of the Foreign Intel-*
23 *ligence Surveillance Act of 1978 as an investiga-*
24 *tive tool, including—*

1 (i) *the importance of the information*
2 *acquired to the intelligence activities of the*
3 *Federal Bureau of Investigation or any*
4 *other department or agency of the Federal*
5 *Government;*

6 (ii) *the manner in which the informa-*
7 *tion is collected, retained, analyzed, and*
8 *disseminated by the Federal Bureau of In-*
9 *vestigation, including any direct access to*
10 *the information provided to any other de-*
11 *partment, agency, or instrumentality of*
12 *Federal, State, local, or tribal governments*
13 *or any private sector entity;*

14 (iii) *with respect to calendar years*
15 *2010 and 2011, an examination of the*
16 *minimization procedures used in relation to*
17 *pen registers and trap and trace devices*
18 *under title IV of the Foreign Intelligence*
19 *Surveillance Act of 1978 and whether the*
20 *minimization procedures protect the con-*
21 *stitutional rights of United States persons*
22 *(as defined in section 101 of the Foreign In-*
23 *telligence Surveillance Act of 1978 (50*
24 *U.S.C. 1801));*

1 (iv) whether, and how often, the Fed-
2 eral Bureau of Investigation used informa-
3 tion acquired under a pen register or trap
4 and trace device under title IV of the For-
5 eign Intelligence Surveillance Act of 1978 to
6 produce an analytical intelligence product
7 for distribution within the Federal Bureau
8 of Investigation, to the intelligence commu-
9 nity (as defined in section 3(4) of the Na-
10 tional Security Act of 1947 (50 U.S.C.
11 401a(4))), or to other Federal, State, local,
12 or tribal government departments, agencies,
13 or instrumentalities; and

14 (v) whether, and how often, the Federal
15 Bureau of Investigation provided informa-
16 tion acquired under a pen register or trap
17 and trace device under title IV of the For-
18 eign Intelligence Surveillance Act of 1978 to
19 law enforcement authorities for use in
20 criminal proceedings.

21 (3) SUBMISSION DATES.—

22 (A) PRIOR YEARS.—Not later than June 30,
23 2011, the Inspector General of the Department of
24 Justice shall submit to the Committee on the Ju-
25 diary and the Select Committee on Intelligence

1 *of the Senate and the Committee on the Judici-*
2 *ary and the Permanent Select Committee on In-*
3 *telligence of the House of Representatives a re-*
4 *port containing the results of the audit conducted*
5 *under this section for calendar years 2007*
6 *through 2009.*

7 *(B) CALENDAR YEARS 2010 AND 2011.—Not*
8 *later than December 21, 2012, the Inspector Gen-*
9 *eral of the Department of Justice shall submit to*
10 *the Committee on the Judiciary and the Select*
11 *Committee on Intelligence of the Senate and the*
12 *Committee on the Judiciary and the Permanent*
13 *Select Committee on Intelligence of the House of*
14 *Representatives a report containing the results of*
15 *the audit conducted under this section for cal-*
16 *endar years 2010 and 2011.*

17 *(4) PRIOR NOTICE TO ATTORNEY GENERAL AND*
18 *DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—*

19 *(A) NOTICE.—Not less than 30 days before*
20 *the submission of a report under subparagraph*
21 *(A) or (B) of paragraph (3), the Inspector Gen-*
22 *eral of the Department of Justice shall provide*
23 *the report to the Attorney General and the Direc-*
24 *tor of National Intelligence.*

1 (B) *COMMENTS.*—*The Attorney General or*
2 *the Director of National Intelligence may pro-*
3 *vide such comments to be included in a report*
4 *submitted under subparagraph (A) or (B) of*
5 *paragraph (3) as the Attorney General or the*
6 *Director of National Intelligence may consider*
7 *necessary.*

8 (5) *UNCLASSIFIED FORM.*—*A report submitted*
9 *under subparagraph (A) or (B) of paragraph (3) and*
10 *any comments included under paragraph (4)(B) shall*
11 *be in unclassified form, but may include a classified*
12 *annex.*

13 **SEC. 11. DELAYED NOTICE SEARCH WARRANTS.**

14 *Section 3103a(b)(3) of title 18, United States Code, is*
15 *amended by striking “30 days” and inserting “7 days”.*

16 **SEC. 12. MINIMIZATION.**

17 (a) *IN GENERAL.*—*Not later than 180 days after the*
18 *date of enactment of this Act, the Attorney General shall—*

19 (1) *establish minimization procedures governing*
20 *the acquisition, retention, and dissemination by the*
21 *Federal Bureau of Investigation of any records re-*
22 *ceived by the Federal Bureau of Investigation in re-*
23 *sponse to a national security letter; and*

24 (2) *submit to the Committee on the Judiciary*
25 *and the Select Committee on Intelligence of the Senate*

1 *and the Committee on the Judiciary and the Perma-*
2 *nent Select Committee on Intelligence of the House of*
3 *Representatives a copy of the minimization proce-*
4 *dures established under paragraph (1).*

5 **(b) DEFINITIONS.**—*In this section—*

6 (1) *the term “minimization procedures”*
7 *means—*

8 (A) *specific procedures that are reasonably*
9 *designed in light of the purpose and technique of*
10 *a national security letter, to minimize the acqui-*
11 *sition and retention, and prohibit the dissemina-*
12 *tion, of nonpublicly available information con-*
13 *cerning unconsenting United States persons (as*
14 *defined in section 101 of the Foreign Intelligence*
15 *Surveillance Act of 1978 (50 U.S.C. 1801)) con-*
16 *sistent with the need of the United States to ob-*
17 *tain, produce, and disseminate foreign intel-*
18 *ligence information;*

19 (B) *procedures that require that nonpub-*
20 *licly available information, which is not foreign*
21 *intelligence information (as defined in section*
22 *101(e)(1) of the Foreign Intelligence Surveillance*
23 *Act of 1978 (50 U.S.C. 1801(e)(1))) shall not be*
24 *disseminated in a manner that identifies any*
25 *United States person, without the consent of the*

1 *United States person, unless the identity of the*
2 *United States person is necessary to understand*
3 *foreign intelligence information or assess its im-*
4 *portance; and*

5 *(C) notwithstanding subparagraphs (A) and*
6 *(B), procedures that allow for the retention and*
7 *dissemination of information that is evidence of*
8 *a crime which has been, is being, or is about to*
9 *be committed and that is to be retained or dis-*
10 *seminated for law enforcement purposes; and*

11 *(2) the term “national security letter” means a*
12 *national security letter issued under section 2709 of*
13 *title 18, United States Code, section 1114(a)(5) of the*
14 *Right to Financial Privacy Act of 1978 (12 U.S.C.*
15 *3414(5)), subsection (a) or (b) of section 626 of the*
16 *Fair Credit Reporting Act (15 U.S.C. 1681u), or sec-*
17 *tion 627 of the Fair Credit Reporting Act (15 U.S.C.*
18 *1681v).*

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111TH CONGRESS
1ST Session

S. 1692

A BILL

To extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes.

OCTOBER 13, 2009

Reported with an amendment