

110TH CONGRESS
1ST SESSION

S. 2088

To place reasonable limitations on the use of National Security Letters,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2007

Mr. FEINGOLD (for himself, Mr. SUNUNU, Mr. DURBIN, Ms. MURKOWSKI, Mr. SALAZAR, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To place reasonable limitations on the use of 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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “National Security Letter Reform Act of 2007” or the
6 “NSL Reform Act of 2007”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. National Security Letter authority for communications subscriber records.

Sec. 3. National Security Letter authority for certain financial records.

- Sec. 4. National Security Letter authority for certain consumer report records.
- Sec. 5. Judicial review of National Security Letters.
- Sec. 6. National Security Letter compliance program and tracking database.
- Sec. 7. Public reporting on National Security Letters.
- Sec. 8. Sunset of expanded National Security Letter authorities.
- Sec. 9. Privacy protections for section 215 business records orders.
- Sec. 10. Judicial review of section 215 orders.
- Sec. 11. Resources for FISA applications.
- Sec. 12. Enhanced protections for emergency disclosures.
- Sec. 13. Clarification regarding data retention.
- Sec. 14. Least intrusive means.

1 **SEC. 2. NATIONAL SECURITY LETTER AUTHORITY FOR**
 2 **COMMUNICATIONS SUBSCRIBER RECORDS.**

3 Section 2709 of title 18, United States Code, is
 4 amended to read as follows:

5 **“§ 2709. National Security Letter for communications**
 6 **subscriber records**

7 “(a) AUTHORIZATION.—

8 “(1) IN GENERAL.—The Director of the Fed-
 9 eral Bureau of Investigation, or a designee of the
 10 Director whose rank shall be no lower than Deputy
 11 Assistant Director at Bureau headquarters or Spe-
 12 cial Agent in Charge of a Bureau field office, may
 13 issue in writing and cause to be served on a wire or
 14 electronic communications service provider a Na-
 15 tional Security Letter requiring the production of
 16 the following:

17 “(A) The name of the customer or sub-
 18 scriber.

19 “(B) The address of the customer or sub-
 20 scriber.

1 “(C) The length of the provision of service
2 by such provider to the customer or subscriber
3 (including start date) and the types of service
4 utilized by the customer or subscriber.

5 “(D) The telephone number or instrument
6 number, or other subscriber number or identi-
7 fier, of the customer or subscriber, including
8 any temporarily assigned network address.

9 “(E) The means and sources of payment
10 for such service (including any credit card or
11 bank account number).

12 “(F) Information about any service or
13 merchandise orders, including any shipping in-
14 formation and vendor locations.

15 “(G) The name and contact information, if
16 available, of any other wire or electronic com-
17 munications service providers facilitating the
18 communications of the customer or subscriber.

19 “(2) LIMITATION.—A National Security Letter
20 issued pursuant to this section shall not require the
21 production of local or long distance telephone
22 records or electronic communications transactional
23 information not listed in paragraph (1).

24 “(b) REQUIREMENTS.—

1 “(1) IN GENERAL.—A National Security Letter
2 shall be issued under subsection (a) only where—

3 “(A) the records sought are relevant to an
4 ongoing, authorized and specifically identified
5 national security investigation (other than a
6 threat assessment); and

7 “(B) there are specific and articulable
8 facts providing reason to believe that the
9 records—

10 “(i) pertain to a suspected agent of a
11 foreign power; or

12 “(ii) pertain to an individual who has
13 been in contact with, or otherwise directly
14 linked to, a suspected agent of a foreign
15 power who is the subject of an ongoing,
16 authorized and specifically identified na-
17 tional security investigation (other than a
18 threat assessment); or

19 “(iii) pertain to the activities of a sus-
20 pected agent of a foreign power, where
21 those activities are the subject of an ongo-
22 ing, authorized and specifically identified
23 national security investigation (other than
24 a threat assessment), and obtaining the
25 records is the least intrusive means that

1 could be used to identify persons believed
2 to be involved in such activities.

3 “(2) INVESTIGATION.—For purposes of this
4 section, an ongoing, authorized, and specifically
5 identified national security investigation—

6 “(A) shall be conducted under guidelines
7 approved by the Attorney General and Execu-
8 tive Order 12333 (or successor order); and

9 “(B) shall not be conducted with respect to
10 a United States person upon the basis of activi-
11 ties protected by the first amendment to the
12 Constitution of the United States.

13 “(3) CONTENTS.—A National Security Letter
14 issued under subsection (a) shall—

15 “(A) describe the records to be produced
16 with sufficient particularity to permit them to
17 be fairly identified;

18 “(B) include the date on which the records
19 must be provided, which shall allow a reason-
20 able period of time within which the records can
21 be assembled and made available;

22 “(C) provide clear and conspicuous notice
23 of the principles and procedures set forth in
24 this section, including notification of any non-
25 disclosure requirement under subsection (c) and

1 a statement laying out the rights and respon-
2 sibilities of the recipient; and

3 “(D) not contain any requirement that
4 would be held to be unreasonable if contained
5 in a subpoena duces tecum issued by a court of
6 the United States in aid of a grand jury inves-
7 tigation or require the production of any docu-
8 mentary evidence that would be privileged from
9 disclosure if demanded by a subpoena duces
10 tecum issued by a court of the United States in
11 aid of a grand jury investigation.

12 “(4) RETENTION OF RECORDS.—The Director
13 of the Federal Bureau of Investigation shall direct
14 that a signed copy of each National Security Letter
15 issued under this section be retained in the database
16 required to be established by section 6 of the Na-
17 tional Security Letter Reform Act of 2007.

18 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

19 “(1) IN GENERAL.—

20 “(A) IN GENERAL.—If a certification is
21 issued pursuant to subparagraph (B), no wire
22 or electronic communication service provider, or
23 officer, employee, or agent thereof, who receives
24 a National Security Letter under this section,
25 shall disclose to any person the particular infor-

1 mation specified in such certification for 30
2 days after receipt of such National Security
3 Letter.

4 “(B) CERTIFICATION.—The requirements
5 of subparagraph (A) shall apply if the Director
6 of the Federal Bureau of Investigation, or a
7 designee of the Director whose rank shall be no
8 lower than Deputy Assistant Director at Bu-
9 reau headquarters or a Special Agent in charge
10 of a Bureau field office, certifies that—

11 “(i) there is reason to believe that dis-
12 closure of particular information about the
13 existence or contents of a National Secu-
14 rity Letter issued under this section will
15 result in—

16 “(I) endangering the life or phys-
17 ical safety of any person;

18 “(II) flight from prosecution;

19 “(III) destruction of or tam-
20 pering with evidence;

21 “(IV) intimidation of potential
22 witnesses;

23 “(V) interference with diplomatic
24 relations; or

1 “(VI) otherwise seriously endan-
2 gering the national security of the
3 United States by alerting a target, a
4 target’s associates, or the foreign
5 power of which the target is an agent,
6 of the Government’s interest in the
7 target; and

8 “(ii) the nondisclosure requirement is
9 narrowly tailored to address the specific
10 harm identified by the Government.

11 “(C) TERMINATION.—If the facts sup-
12 porting a nondisclosure requirement cease to
13 exist prior to the 30-day period specified in sub-
14 paragraph (A), an appropriate official of the
15 Federal Bureau of Investigation shall promptly
16 notify the wire or electronic service provider, or
17 officer, employee, or agent thereof, subject to
18 the nondisclosure requirement that such non-
19 disclosure requirement is no longer in effect.

20 “(2) EXCEPTION.—

21 “(A) IN GENERAL.—A wire or electronic
22 communication service provider, or officer, em-
23 ployee, or agent thereof, who receives a Na-
24 tional Security Letter under this section may

1 disclose information otherwise subject to any
2 applicable nondisclosure requirement to—

3 “(i) those persons to whom disclosure
4 is necessary in order to comply with a Na-
5 tional Security Letter under this section;

6 “(ii) an attorney in order to obtain
7 legal advice or assistance regarding such
8 National Security Letter; or

9 “(iii) other persons as permitted by
10 the Director of the Federal Bureau of In-
11 vestigation or the designee of the Director.

12 “(B) NONDISCLOSURE REQUIREMENT.—A
13 person to whom disclosure is made pursuant to
14 subparagraph (A) shall be subject to the non-
15 disclosure requirements applicable to a person
16 to whom a National Security Letter is directed
17 under this section in the same manner as such
18 person.

19 “(C) NOTICE.—Any recipient who discloses
20 to a person described in subparagraph (A) in-
21 formation otherwise subject to a nondisclosure
22 requirement shall inform such person of the ap-
23 plicable nondisclosure requirement.

24 “(3) EXTENSION.—The Director of the Federal
25 Bureau of Investigation, or a designee of the Direc-

1 tor whose rank shall be no lower than Deputy As-
2 sistant Director at Bureau headquarters or a Special
3 Agent in Charge of a Bureau field office, may apply
4 for an order prohibiting disclosure of particular in-
5 formation about the existence or contents of a Na-
6 tional Security Letter issued under this section for
7 an additional 180 days.

8 “(4) JURISDICTION.—An application for an
9 order pursuant to this subsection shall be filed in
10 the district court of the United States in any district
11 within which the authorized investigation that is the
12 basis for a request pursuant to this section is being
13 conducted.

14 “(5) APPLICATION CONTENTS.—An application
15 for an order pursuant to this subsection shall in-
16 clude—

17 “(A) a statement of specific and articulable
18 facts giving the applicant reason to believe that
19 disclosure of particular information about the
20 existence or contents of a National Security
21 Letter issued under this section will result in—

22 “(i) endangering the life or physical
23 safety of any person;

24 “(ii) flight from prosecution;

1 “(iii) destruction of or tampering with
2 evidence;

3 “(iv) intimidation of potential wit-
4 nesses;

5 “(v) interference with diplomatic rela-
6 tions; or

7 “(vi) otherwise seriously endangering
8 the national security of the United States
9 by alerting a target, a target’s associates,
10 or the foreign power of which the target is
11 an agent, of the Government’s interest in
12 the target; and

13 “(B) an explanation of how the nondislo-
14 sure requirement is narrowly tailored to address
15 the specific harm identified by the Government.

16 “(6) STANDARD.—The court may issue an ex
17 parte order pursuant to this subsection if the court
18 determines—

19 “(A) there is reason to believe that dislo-
20 sure of particular information about the exist-
21 ence or contents of a National Security Letter
22 issued under this section will result in—

23 “(i) endangering the life or physical
24 safety of any person;

25 “(ii) flight from prosecution;

1 “(iii) destruction of or tampering with
2 evidence;

3 “(iv) intimidation of potential wit-
4 nesses;

5 “(v) interference with diplomatic rela-
6 tions; or

7 “(vi) otherwise seriously endangering
8 the national security of the United States
9 by alerting a target, a target’s associates,
10 or the foreign power of which the target is
11 an agent, of the Government’s interest in
12 the target; and

13 “(B) the nondisclosure requirement is nar-
14 rowly tailored to address the specific harm iden-
15 tified by the Government.

16 “(7) RENEWAL.—An order under this sub-
17 section may be renewed for additional periods of up
18 to 180 days upon another application meeting the
19 requirements of paragraph (5) and a determination
20 by the court that the circumstances described in
21 paragraph (6) continue to exist.

22 “(8) TERMINATION.—If the facts supporting a
23 nondisclosure requirement cease to exist prior to the
24 expiration of the time period imposed by a court for
25 that nondisclosure requirement, an appropriate offi-

1 cial of the Federal Bureau of Investigation shall
2 promptly notify the court, and the court shall termi-
3 nate such nondisclosure requirement.

4 “(d) MINIMIZATION AND DESTRUCTION.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the enactment of this section, the Attorney
7 General shall establish minimization and destruction
8 procedures governing the retention and dissemina-
9 tion by the Federal Bureau of Investigation of any
10 records received by the Federal Bureau of Investiga-
11 tion in response to a National Security Letter under
12 this section.

13 “(2) DEFINITION.—In this section, the term
14 ‘minimization and destruction procedures’ means—

15 “(A) specific procedures that are reason-
16 ably designed in light of the purpose and tech-
17 nique of a National Security Letter, to mini-
18 mize the retention, and prohibit the dissemina-
19 tion, of nonpublicly available information con-
20 cerning unconsenting United States persons
21 consistent with the need of the United States to
22 obtain, produce, and disseminate foreign intel-
23 ligence information, including procedures to en-
24 sure that information obtained pursuant to a
25 National Security Letter regarding persons no

1 longer of interest in an authorized investigation,
2 or information obtained pursuant to a National
3 Security Letter that does not meet the require-
4 ments of this section or is outside the scope of
5 such National Security Letter, is returned or
6 destroyed;

7 “(B) procedures that require that nonpub-
8 licly available information, which is not foreign
9 intelligence information, as defined in section
10 101(e)(1) of the Foreign Intelligence Surveil-
11 lance Act of 1978, shall not be disseminated in
12 a manner that identifies any United States per-
13 son, without such person’s consent, unless such
14 person’s identity is necessary to understand for-
15 eign intelligence information or assess its im-
16 portance; and

17 “(C) notwithstanding subparagraphs (A)
18 and (B), procedures that allow for the retention
19 and dissemination of information that is evi-
20 dence of a crime which has been, is being, or
21 is about to be committed and that is to be re-
22 tained or disseminated for law enforcement pur-
23 poses.

24 “(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL
25 BODIES BE INFORMED.—

1 “(1) IN GENERAL.—On a semiannual basis the
2 Director of the Federal Bureau of Investigation shall
3 fully inform the Permanent Select Committee on In-
4 telligence of the Senate and the Select Committee on
5 Intelligence of the House of Representatives, and the
6 Committee on the Judiciary of the Senate and the
7 Committee on the Judiciary of the House of Rep-
8 resentatives, concerning all requests made under this
9 section.

10 “(2) CONTENTS.—The report required by para-
11 graph (1) shall include—

12 “(A) a description of the minimization and
13 destruction procedures adopted by the Attorney
14 General pursuant to subsection (d), including
15 any changes to such minimization procedures
16 previously adopted by the Attorney General;

17 “(B) a summary of the court challenges
18 brought pursuant to section 3511 of title 18,
19 United States Code, by recipients of National
20 Security Letters;

21 “(C) a description of the extent to which
22 information obtained with National Security
23 Letters under this section has aided intelligence
24 investigations and an explanation of how such
25 information has aided such investigations; and

1 “(D) a description of the extent to which
2 information obtained with National Security
3 Letters under this section has aided criminal
4 prosecutions and an explanation of how such in-
5 formation has aided such prosecutions.

6 “(f) USE OF INFORMATION.—

7 “(1) IN GENERAL.—

8 “(A) CONSENT.—Any information ac-
9 quired from a National Security Letter pursu-
10 ant to this section concerning any United
11 States person may be used and disclosed by
12 Federal officers and employees without the con-
13 sent of the United States person only in accord-
14 ance with the minimization and destruction pro-
15 cedures required by this section.

16 “(B) LAWFUL PURPOSE.—No information
17 acquired from a National Security Letter pur-
18 suant to this section may be used or disclosed
19 by Federal officers or employees except for law-
20 ful purposes.

21 “(2) DISCLOSURE FOR LAW ENFORCEMENT
22 PURPOSES.—No information acquired pursuant to
23 this section shall be disclosed for law enforcement
24 purposes unless such disclosure is accompanied by a
25 statement that such information, or any information

1 derived therefrom, may only be used in a criminal
2 proceeding with the advance authorization of the At-
3 torney General.

4 “(3) NOTIFICATION OF INTENDED DISCLOSURE
5 BY THE UNITED STATES.—Whenever the United
6 States intends to enter into evidence or otherwise
7 use or disclose in any trial, hearing, or other pro-
8 ceeding in or before any court, department, officer,
9 agency, regulatory body, or other authority of the
10 United States against an aggrieved person any infor-
11 mation obtained or derived from a National Security
12 Letter pursuant to this section, the United States
13 shall, before the trial, hearing, or other proceeding
14 or at a reasonable time before an effort to so dis-
15 close or so use this information or submit it in evi-
16 dence, notify the aggrieved person and the court or
17 other authority in which the information is to be dis-
18 closed or used that the United States intends to so
19 disclose or so use such information.

20 “(4) NOTIFICATION OF INTENDED DISCLOSURE
21 BY STATE OR POLITICAL SUBDIVISION.—Whenever
22 any State or political subdivision thereof intends to
23 enter into evidence or otherwise use or disclose in
24 any trial, hearing, or other proceeding in or before
25 any court, department, officer, agency, regulatory

1 body, or other authority of the State or political sub-
2 division thereof against an aggrieved person any in-
3 formation obtained or derived from a National Secu-
4 rity Letter pursuant to this section, the State or po-
5 litical subdivision thereof shall notify the aggrieved
6 person, the court or other authority in which the in-
7 formation is to be disclosed or used, and the Attor-
8 ney General that the State or political subdivision
9 thereof intends to so disclose or so use such informa-
10 tion.

11 “(5) MOTION TO SUPPRESS.—

12 “(A) IN GENERAL.—Any aggrieved person
13 against whom evidence obtained or derived from
14 a National Security Letter pursuant to this sec-
15 tion is to be, or has been, introduced or other-
16 wise used or disclosed in any trial, hearing, or
17 other proceeding in or before any court, depart-
18 ment, officer, agency, regulatory body, or other
19 authority of the United States, or a State or
20 political subdivision thereof, may move to sup-
21 press the evidence obtained or derived from the
22 National Security Letter, as the case may be,
23 on the grounds that—

1 “(i) the information was acquired in
2 violation of the Constitution or laws of the
3 United States; or

4 “(ii) the National Security Letter was
5 not issued in conformity with the require-
6 ments of this section.

7 “(B) TIMING.—A motion under subpara-
8 graph (A) shall be made before the trial, hear-
9 ing, or other proceeding unless there was no op-
10 portunity to make such a motion or the ag-
11 grievied person concerned was not aware of the
12 grounds of the motion.

13 “(6) JUDICIAL REVIEW.—

14 “(A) IN GENERAL.—Whenever—

15 “(i) a court or other authority is noti-
16 fied pursuant to paragraph (3) or (4);

17 “(ii) a motion is made pursuant to
18 paragraph (5); or

19 “(iii) any motion or request is made
20 by an aggrieved person pursuant to any
21 other statute or rule of the United States
22 or any State before any court or other au-
23 thority of the United States or any State
24 to—

1 “(I) discover or obtain materials
2 relating to a National Security Letter
3 issued pursuant to this section; or

4 “(II) discover, obtain, or sup-
5 press evidence or information obtained
6 or derived from a National Security
7 Letter issued pursuant to this section;

8 the United States district court or, where the
9 motion is made before another authority, the
10 United States district court in the same district
11 as the authority shall, notwithstanding any
12 other provision of law and if the Attorney Gen-
13 eral files an affidavit under oath that disclosure
14 would harm the national security of the United
15 States, review in camera the materials as may
16 be necessary to determine whether the request
17 was lawful.

18 “(B) DISCLOSURE.—In making a deter-
19 mination under subparagraph (A), unless the
20 court finds that such disclosure would not assist
21 in determining any legal or factual issue perti-
22 nent to the case, the court shall disclose to the
23 aggrieved person, the counsel of the aggrieved
24 person, or both, under the procedures and
25 standards provided in the Classified Informa-

1 tion Procedures Act (18 U.S.C. App.) or other
2 applicable law, portions of the application,
3 order, or other related materials, or evidence or
4 information obtained or derived from the order.

5 “(7) EFFECT OF DETERMINATION OF LAWFUL-
6 NESS.—

7 “(A) UNLAWFUL ORDERS.—If the United
8 States district court determines pursuant to
9 paragraph (6) that the National Security Letter
10 was not in compliance with the Constitution or
11 laws of the United States, the court may, in ac-
12 cordance with the requirements of law, suppress
13 the evidence which was unlawfully obtained or
14 derived from the National Security Letter or
15 otherwise grant the motion of the aggrieved
16 person.

17 “(B) LAWFUL ORDERS.—If the court de-
18 termines that the National Security Letter was
19 lawful, it may deny the motion of the aggrieved
20 person except to the extent that due process re-
21 quires discovery or disclosure.

22 “(8) BINDING FINAL ORDERS.—Orders grant-
23 ing motions or requests under paragraph (6), deci-
24 sions under this section that a National Security
25 Letter was not lawful, and orders of the United

1 States district court requiring review or granting
 2 disclosure of applications, orders, or other related
 3 materials shall be final orders and binding upon all
 4 courts of the United States and the several States
 5 except a United States court of appeals or the Su-
 6 preme Court.

7 “(g) DEFINITIONS.—As used in this section—

8 “(1) the term ‘agent of a foreign power’ has the
 9 meaning given such term by section 101(b) of the
 10 Foreign Intelligence Surveillance Act of 1978 (50
 11 U.S.C. 1801(b));

12 “(2) the term ‘aggrieved person’ means a per-
 13 son whose information or records were sought or ob-
 14 tained under this section; and

15 “(3) the term ‘foreign power’ has the meaning
 16 given such term by section 101(a) of the Foreign In-
 17 telligence Surveillance Act of 1978 (50 U.S.C.
 18 1801(a)).”.

19 **SEC. 3. NATIONAL SECURITY LETTER AUTHORITY FOR CER-**
 20 **TAIN FINANCIAL RECORDS.**

21 Section 1114 of the Right to Financial Privacy Act
 22 of 1978 (12 U.S.C. 3414) is amended to read as follows:

23 **“SEC. 1114. NATIONAL SECURITY LETTER FOR CERTAIN FI-**
 24 **NANCIAL RECORDS.**

25 “(a) AUTHORIZATION.—

1 “(1) IN GENERAL.—The Director of the Fed-
2 eral Bureau of Investigation, or a designee of the
3 Director whose rank shall be no lower than Deputy
4 Assistant Director at Bureau headquarters or Spe-
5 cial Agent in Charge of a Bureau field office, may
6 issue in writing and cause to be served on a financial
7 institution, a National Security Letter requiring the
8 production of—

9 “(A) the name of the customer or entity
10 with whom the financial institution has a finan-
11 cial relationship;

12 “(B) the address of the customer or entity
13 with whom the financial institution has a finan-
14 cial relationship;

15 “(C) the length of time during which the
16 customer or entity has had an account or other
17 financial relationship with the financial institu-
18 tion (including the start date) and the type of
19 account or other financial relationship; and

20 “(D) any account number or other unique
21 identifier associated with the financial relation-
22 ship of the customer or entity to the financial
23 institution.

24 “(2) LIMITATION.—A National Security Letter
25 issued pursuant to this section may require the pro-

1 duction only of records identified in subparagraphs
2 (A) through (D) of paragraph (1).

3 “(b) NATIONAL SECURITY LETTER REQUIRE-
4 MENTS.—

5 “(1) IN GENERAL.—A National Security Letter
6 issued under this section shall be subject to the re-
7 quirements of subsections (b) through (g) of section
8 2709 of title 18, United States Code, in the same
9 manner and to the same extent as those provisions
10 apply with respect to wire and electronic communica-
11 tion service providers.

12 “(2) REPORTING.—For purposes of this sec-
13 tion, the reporting requirement in section 2709(e) of
14 title 18, United States Code, shall also require in-
15 forming the Committee on Banking, Housing, and
16 Urban Affairs of the Senate and the Committee on
17 Financial Services of the House of Representatives.

18 “(c) DEFINITION OF ‘FINANCIAL INSTITUTION’.—
19 For purposes of this section, section 1115, and section
20 1117, insofar as they relate to the operation of this sec-
21 tion, the term ‘financial institution’ has the same meaning
22 as in subsections (a)(2) and (c)(1) of section 5312 of title
23 31, except that, for purposes of this section, such term
24 shall include only such a financial institution any part of
25 which is located inside any State or territory of the United

1 States, the District of Columbia, Puerto Rico, Guam,
 2 American Samoa, the Commonwealth of the Northern
 3 Mariana Islands, or the United States Virgin Islands.”.

4 **SEC. 4. NATIONAL SECURITY LETTER AUTHORITY FOR CER-**
 5 **TAIN CONSUMER REPORT RECORDS.**

6 Section 626 of the Fair Credit Reporting Act (15
 7 U.S.C. 1681u) is amended—

8 (1) by striking the section heading and insert-
 9 ing the following:

10 **“§ 626. National Security Letters for certain con-**
 11 **sumer report records”;**

12 (2) by striking subsections (a) through (d) and
 13 inserting the following:

14 “(a) AUTHORIZATION.—

15 “(1) IN GENERAL.—The Director of the Fed-
 16 eral Bureau of Investigation, or a designee of the
 17 Director whose rank shall be no lower than Deputy
 18 Assistant Director at Bureau headquarters or Spe-
 19 cial Agent in Charge of a Bureau field office, may
 20 issue in writing and cause to be served on a con-
 21 sumer reporting agency a National Security Letter
 22 requiring the production of—

23 “(A) the name of a consumer;

24 “(B) the current and former address of a
 25 consumer;

1 “(C) the current and former places of em-
2 ployment of a consumer; and

3 “(D) the names and addresses of all finan-
4 cial institutions (as that term is defined in sec-
5 tion 1101 of the Right to Financial Privacy Act
6 of 1978) at which a consumer maintains or has
7 maintained an account, to the extent that such
8 information is in the files of the consumer re-
9 porting agency.

10 “(2) LIMITATION.—A National Security Letter
11 issued pursuant to this section may not require the
12 production of a consumer report.

13 “(b) NATIONAL SECURITY LETTER REQUIRE-
14 MENTS.—

15 “(1) IN GENERAL.—A National Security Letter
16 issued under this section shall be subject to the re-
17 quirements of subsections (b) through (g) of section
18 2709 of title 18, United States Code, in the same
19 manner and to the same extent as those provisions
20 apply with respect to wire and electronic communica-
21 tion service providers.

22 “(2) REPORTING.—For purposes of this sec-
23 tion, the reporting requirement in section 2709(e) of
24 title 18, United States Code, shall also require in-
25 forming the Committee on Banking, Housing, and

1 Urban Affairs of the Senate and the Committee on
2 Financial Services of the House of Representa-
3 tives.”;

4 (3) by striking subsections (f) through (h); and

5 (4) by redesignating subsections (e) and (i)
6 through (m) as subsections (c) through (h), respec-
7 tively.

8 **SEC. 5. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
9 **TERS.**

10 (a) REVIEW OF NONDISCLOSURE ORDERS.—Section
11 3511(b) of title 18, United States Code, is amended to
12 read as follows:

13 “(b) NONDISCLOSURE.—

14 “(1) IN GENERAL.—The recipient of a request
15 for records or other information under section 2709
16 of this title, section 626 of the Fair Credit Report-
17 ing Act, section 1114 of the Right to Financial Pri-
18 vacy Act, or section 802(a) of the National Security
19 Act of 1947, may petition any court described in
20 subsection (a) to modify or set aside a nondisclosure
21 requirement imposed in connection with such a re-
22 quest. Such petition shall specify each ground upon
23 which the petitioner relies in seeking relief, and may
24 be based upon any failure of the nondisclosure re-
25 quirement to comply with the provisions of section

1 2709 of this title, section 626 of the Fair Credit Re-
2 porting Act, section 1114 of the Right to Financial
3 Privacy Act, or section 802(a) of the National Secu-
4 rity Act of 1947, or upon any constitutional or other
5 legal right or privilege of such person.

6 “(2) STANDARD.—The court shall modify or set
7 aside the nondisclosure requirement unless the court
8 determines that—

9 “(A) there is a reason to believe that dis-
10 closure of the information subject to the non-
11 disclosure requirement will result in—

12 “(i) endangering the life or physical
13 safety of any person;

14 “(ii) flight from prosecution;

15 “(iii) destruction of or tampering with
16 evidence;

17 “(iv) intimidation of potential wit-
18 nesses;

19 “(v) interference with diplomatic rela-
20 tions; or

21 “(vi) otherwise seriously endangering
22 the national security of the United States
23 by alerting a target, a target’s associates,
24 or the foreign power of which the target is

1 an agent, of the Government’s interest in
2 the target; and

3 “(B) the nondisclosure requirement is nar-
4 rowly tailored to address the specific harm iden-
5 tified by the Government.”.

6 (b) DISCLOSURE.—Section 3511(d) of title 18,
7 United States Code, is amended to read as follows:

8 “(d) DISCLOSURE.—In making determinations under
9 this section, unless the court finds that such disclosure
10 would not assist in determining any legal or factual issue
11 pertinent to the case, the court shall disclose to the peti-
12 tioner, the counsel of the petitioner, or both, under the
13 procedures and standards provided in the Classified Infor-
14 mation Procedures Act (18 U.S.C. App.) or other applica-
15 ble law, portions of the application, National Security Let-
16 ter, or other related materials.”.

17 (c) CONFORMING AMENDMENTS.—Section 3511 of
18 title 18, United States Code, is amended—

19 (1) in subsection (a), by—

20 (A) inserting after “(a)” the following
21 “REQUEST.—”;

22 (B) striking “2709(b)” and inserting
23 “2709”;

24 (C) striking “626(a) or (b) or 627(a)” and
25 inserting “626”; and

1 (D) striking “1114(a)(5)(A)” and insert-
2 ing “1114”; and

3 (2) in subsection (c), by—

4 (A) inserting after “(c)” the following
5 “FAILURE TO COMPLY.—”;

6 (B) by striking “2709(b)” and inserting
7 “2709”;

8 (C) by striking “626(a) or (b) or 627(a)”
9 and inserting “626”; and

10 (D) by striking “1114(a)(5)(A)” and in-
11 serting “1114”.

12 (d) REPEAL.—Section 3511(e) of title 18, United
13 States Code, is repealed.

14 **SEC. 6. NATIONAL SECURITY LETTER COMPLIANCE PRO-**
15 **GRAM AND TRACKING DATABASE.**

16 (a) COMPLIANCE PROGRAM.—The Director of the
17 Federal Bureau of Investigation shall establish a program
18 to ensure compliance with the amendments made by sec-
19 tions 2, 3, and 4 of this Act.

20 (b) TRACKING DATABASE.—The compliance program
21 required by subsection (a) shall include the establishment
22 of a database, the purpose of which shall be to track all
23 National Security Letters issued by the Federal Bureau
24 of Investigation under section 1114 of the Right to Finan-
25 cial Privacy Act of 1978 (12 U.S.C. 3414), section 626

1 of the Fair Credit Reporting Act (15 U.S.C. 1681u), and
2 section 2709 of title 18, United States Code.

3 (c) INFORMATION.—The database required by this
4 section shall include—

5 (1) a signed copy of each National Security
6 Letter;

7 (2) the date the National Security Letter was
8 issued and for what type of information;

9 (3) whether the National Security Letter seeks
10 information regarding a United States person or
11 non-United States person;

12 (4) the ongoing, authorized, and specifically
13 identified national security investigation (other than
14 a threat assessment) to which the National Security
15 Letter relates;

16 (5) whether the National Security Letter seeks
17 information regarding an individual who is the sub-
18 ject of such investigation;

19 (6) when the information requested was re-
20 ceived and, if applicable, when it was destroyed; and

21 (7) whether the information gathered was dis-
22 closed for law enforcement purposes.

1 **SEC. 7. PUBLIC REPORTING ON NATIONAL SECURITY LET-**
2 **TERS.**

3 Section 118(c) of the USA PATRIOT Improvement
4 and Reauthorization Act of 2005 (Public Law 109–177)
5 is amended—

6 (1) in paragraph (1)—

7 (A) by striking “concerning different
8 United States persons”; and

9 (B) in subparagraph (A), by striking “, ex-
10 cluding the number of requests for subscriber
11 information”;

12 (2) by redesignating paragraph (2) as para-
13 graph (3); and

14 (3) by inserting after paragraph (1) the fol-
15 lowing:

16 “(2) CONTENT.—The report required by this
17 subsection shall include the total number of requests
18 described in paragraph (1) requiring disclosure of
19 information concerning—

20 “(A) United States persons;

21 “(B) non-United States persons;

22 “(C) persons who are the subjects of au-
23 thorized national security investigations; and

24 “(D) persons who are not the subjects of
25 authorized national security investigations.”.

1 **SEC. 8. SUNSET OF EXPANDED NATIONAL SECURITY LET-**
2 **TER AUTHORITIES.**

3 Subsection 102(b) of Public Law 109–177 is amend-
4 ed to read as follows:

5 “(b) SECTIONS 206, 215, 358(g), 505 SUNSET.—

6 “(1) IN GENERAL.—Effective December 31,
7 2009, the following provisions are amended to read
8 as they read on October 25, 2001—

9 “(A) sections 501, 502, and 105(e)(2) of
10 the Foreign Intelligence Surveillance Act of
11 1978;

12 “(B) section 2709 of title 18, United
13 States Code;

14 “(C) sections 626 and 627 of the Fair
15 Credit Reporting Act (15 U.S.C. 1681u,
16 1681v); and

17 “(D) section 1114 of the Right to Finan-
18 cial Privacy Act (12 U.S.C. 3414).

19 “(2) EXCEPTION.—With respect to any par-
20 ticular foreign intelligence investigation that began
21 before the date on which the provisions referred to
22 in paragraph (1) cease to have effect, or with re-
23 spect to any particular offense or potential offense
24 that began or occurred before the date on which
25 such provisions cease to have effect, such provisions
26 shall continue in effect.”.

1 **SEC. 9. PRIVACY PROTECTIONS FOR SECTION 215 BUSI-**
2 **NESS RECORDS ORDERS.**

3 (a) IN GENERAL.—Section 501(b) of the Foreign In-
4 telligence Surveillance Act of 1978 (50 U.S.C. 1861(b)(2))
5 is amended—

6 (1) in paragraph (1)(B), by striking “and”
7 after the semicolon;

8 (2) in paragraph (2)—

9 (A) in subparagraph (A), by striking “,
10 such things being presumptively” through the
11 end of the subparagraph and inserting a semi-
12 colon;

13 (B) by redesignating subparagraph (B) as
14 subparagraph (C) and striking the period at the
15 end and inserting “; and”; and

16 (C) by inserting after subparagraph (A)
17 the following:

18 “(B) a statement of specific and
19 articulable facts providing reason to believe that
20 the tangible things sought—

21 “(i) pertain to a suspected agent of a
22 foreign power; or

23 “(ii) pertain to an individual who has
24 been in contact with, or otherwise directly
25 linked to, a suspected agent of a foreign
26 power if the circumstances of that contact

1 or link suggest that the records sought will
2 be relevant to an ongoing, authorized and
3 specifically identified national security in-
4 vestigation (other than a threat assess-
5 ment) of that suspected agent of a foreign
6 power; and”;

7 (3) by inserting at the end the following:

8 “(3) if the applicant is seeking a nondisclosure
9 requirement described in subsection (d), shall in-
10 clude—

11 “(A) a statement of specific and articulable
12 facts providing reason to believe that disclosure
13 of particular information about the existence or
14 contents of the order requiring the production
15 of tangible things under this section will result
16 in—

17 “(i) endangering the life or physical
18 safety of any person;

19 “(ii) flight from prosecution;

20 “(iii) destruction of or tampering with
21 evidence;

22 “(iv) intimidation of potential wit-
23 nesses;

24 “(v) interference with diplomatic rela-
25 tions; or

1 “(vi) otherwise seriously endangering
2 the national security of the United States
3 by alerting a target, a target’s associates,
4 or the foreign power of which the target is
5 an agent, of the Government’s interest in
6 the target; and

7 “(B) an explanation of how the nondisclo-
8 sure requirement is narrowly tailored to address
9 the specific harm identified by the Govern-
10 ment.”.

11 (b) ORDER.—Section 501(c) of the Foreign Intel-
12 ligence Surveillance Act of 1978 (50 U.S.C. 1861(c)) is
13 amended—

14 (1) in paragraph (1), by—

15 (A) striking “subsections (a) and (b)” and
16 inserting “subsection (a) and paragraphs (1)
17 and (2) of subsection (b)”; and

18 (B) inserting at the end the following: “If
19 the judge finds that the requirements of sub-
20 section (b)(3) have been met, such order shall
21 include a nondisclosure requirement subject to
22 the principles and procedures described in sub-
23 section (d)”; and

24 (2) in paragraph (2)(C), by inserting before the
25 semicolon “, if applicable”.

1 (c) NONDISCLOSURE.—Section 501(d) of the Foreign
2 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(d))
3 is amended to read as follows:

4 “(d) NONDISCLOSURE.—

5 “(1) IN GENERAL.—No person who receives an
6 order under subsection (c) that contains a nondislo-
7 sure requirement shall disclose to any person the
8 particular information specified in such nondislo-
9 sure requirement for 180 days after receipt of such
10 order.

11 “(2) EXCEPTION.—

12 “(A) DISCLOSURE.—A person who receives
13 an order under subsection (c) that contains a
14 nondisclosure requirement may disclose infor-
15 mation otherwise subject to any applicable non-
16 disclosure requirement to—

17 “(i) those persons to whom disclosure
18 is necessary in order to comply with an
19 order under this section;

20 “(ii) an attorney in order to obtain
21 legal advice or assistance regarding such
22 order; or

23 “(iii) other persons as permitted by
24 the Director of the Federal Bureau of In-
25 vestigation or the designee of the Director.

1 “(B) APPLICATION.—A person to whom
2 disclosure is made pursuant to subparagraph
3 (A) shall be subject to the nondisclosure re-
4 quirements applicable to a person to whom an
5 order is directed under this section in the same
6 manner as such person.

7 “(C) NOTIFICATION.—Any person who dis-
8 closes to a person described in subparagraph
9 (A) information otherwise subject to a non-
10 disclosure requirement shall notify such person
11 of the applicable nondisclosure requirement.

12 “(3) EXTENSION.—The Director of the Federal
13 Bureau of Investigation, or a designee of the Direc-
14 tor (whose rank shall be no lower than Assistant
15 Special Agent in Charge), may apply for renewals
16 for the prohibition on disclosure of particular infor-
17 mation about the existence or contents of an order
18 requiring the production of tangible things under
19 this section for additional periods of up to 180 days
20 each. Such nondisclosure requirement shall be re-
21 newed if a court having jurisdiction pursuant to
22 paragraph (4) determines that the application meets
23 the requirements of subsection (b)(3).

24 “(4) JURISDICTION.—An application for a re-
25 newal pursuant to this subsection shall be made to—

1 “(A) a judge of the court established under
2 section 103(a); or

3 “(B) a United States Magistrate Judge
4 under chapter 43 of title 28, who is publicly
5 designated by the Chief Justice of the United
6 States to have the power to hear applications
7 and grant orders for the production of tangible
8 things under this section on behalf of a judge
9 of the court established under section 103(a).”.

10 (d) USE OF INFORMATION.—Section 501(h) of the
11 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
12 1861) is amended to read as follows:

13 “(h) USE OF INFORMATION.—

14 “(1) IN GENERAL.—

15 “(A) CONSENT.—Any tangible things or
16 information acquired from an order pursuant to
17 this section concerning any United States per-
18 son may be used and disclosed by Federal offi-
19 cers and employees without the consent of the
20 United States person only in accordance with
21 the minimization procedures required by this
22 section.

23 “(B) USE AND DISCLOSURE.—No tangible
24 things or information acquired from an order
25 pursuant to this section may be used or dis-

1 closed by Federal officers or employees except
2 for lawful purposes.

3 “(2) DISCLOSURE FOR LAW ENFORCEMENT
4 PURPOSES.—No tangible things or information ac-
5 quired pursuant to this section shall be disclosed for
6 law enforcement purposes unless such disclosure is
7 accompanied by a statement that such tangible
8 things or information, or any information derived
9 therefrom, may only be used in a criminal pro-
10 ceeding with the advance authorization of the Attor-
11 ney General.

12 “(3) NOTIFICATION OF INTENDED DISCLOSURE
13 BY THE UNITED STATES.—Whenever the United
14 States intends to enter into evidence or otherwise
15 use or disclose in any trial, hearing, or other pro-
16 ceeding in or before any court, department, officer,
17 agency, regulatory body, or other authority of the
18 United States against an aggrieved person any tan-
19 gible things or information obtained or derived from
20 an order pursuant to this section, the United States
21 shall, before the trial, hearing, or other proceeding
22 or at a reasonable time before an effort to so dis-
23 close or so use the tangible things or information or
24 submit them in evidence, notify the aggrieved person
25 and the court or other authority in which the tan-

1 gible things or information are to be disclosed or
2 used that the United States intends to so disclose or
3 so use such tangible things or information.

4 “(4) NOTIFICATION OF INTENDED DISCLOSURE
5 BY STATE OR POLITICAL SUBDIVISION.—Whenever
6 any State or political subdivision thereof intends to
7 enter into evidence or otherwise use or disclose in
8 any trial, hearing, or other proceeding in or before
9 any court, department, officer, agency, regulatory
10 body, or other authority of the State or political sub-
11 division thereof against an aggrieved person any tan-
12 gible things or information obtained or derived from
13 an order pursuant to this section, the State or polit-
14 ical subdivision thereof shall notify the aggrieved
15 person, the court or other authority in which the
16 tangible things or information are to be disclosed or
17 used, and the Attorney General that the State or po-
18 litical subdivision thereof intends to so disclose or so
19 use such tangible things or information.

20 “(5) MOTION TO SUPPRESS.—

21 “(A) IN GENERAL.—Any aggrieved person
22 against whom evidence obtained or derived from
23 an order pursuant to this section is to be, or
24 has been, introduced or otherwise used or dis-
25 closed in any trial, hearing, or other proceeding

1 in or before any court, department, officer,
2 agency, regulatory body, or other authority of
3 the United States, or a State or political sub-
4 division thereof, may move to suppress the evi-
5 dence obtained or derived from the order, as the
6 case may be, on the grounds that—

7 “(i) the tangible things or information
8 were acquired in violation of the Constitu-
9 tion or laws of the United States; or

10 “(ii) the order was not issued in con-
11 formity with the requirements of this sec-
12 tion.

13 “(B) TIMING.—A motion under subpara-
14 graph (A) shall be made before the trial, hear-
15 ing, or other proceeding unless there was no op-
16 portunity to make such a motion or the ag-
17 grieved person concerned was not aware of the
18 grounds of the motion.

19 “(6) JUDICIAL REVIEW.—

20 “(A) IN GENERAL.—Whenever—

21 “(i) a court or other authority is noti-
22 fied pursuant to paragraph (3) or (4);

23 “(ii) a motion is made pursuant to
24 paragraph (5); or

1 “(iii) any motion or request is made
2 by an aggrieved person pursuant to any
3 other statute or rule of the United States
4 or any State before any court or other au-
5 thority of the United States or any State
6 to—

7 “(I) discover or obtain applica-
8 tions, orders, or other materials relat-
9 ing to an order issued pursuant to
10 this section; or

11 “(II) discover, obtain, or sup-
12 press evidence or information obtained
13 or derived from an order issued pur-
14 suant to this section;

15 the United States district court or, where the
16 motion is made before another authority, the
17 United States district court in the same district
18 as the authority shall, notwithstanding any
19 other provision of law and if the Attorney Gen-
20 eral files an affidavit under oath that disclosure
21 would harm the national security of the United
22 States, review in camera the application, order,
23 and such other related materials as may be nec-
24 essary to determine whether the order was law-
25 fully authorized and served.

1 “(B) DISCLOSURE.—In making a deter-
2 mination under subparagraph (A), unless the
3 court finds that such disclosure would not assist
4 in determining any legal or factual issue perti-
5 nent to the case, the court shall disclose to the
6 aggrieved person, the counsel of the aggrieved
7 person, or both, under the procedures and
8 standards provided in the Classified Informa-
9 tion Procedures Act (18 U.S.C. App.) or other
10 applicable law, portions of the application,
11 order, or other related materials, or evidence or
12 information obtained or derived from the order.

13 “(7) EFFECT OF DETERMINATION OF LAWFUL-
14 NESS.—

15 “(A) UNLAWFUL ORDERS.—If the United
16 States district court determines pursuant to
17 paragraph (6) that the order was not author-
18 ized or served in compliance with the Constitu-
19 tion or laws of the United States, the court
20 may, in accordance with the requirements of
21 law, suppress the evidence which was unlawfully
22 obtained or derived from the order or otherwise
23 grant the motion of the aggrieved person.

24 “(B) LAWFUL ORDERS.—If the court de-
25 termines that the order was lawfully authorized

1 and served, it may deny the motion of the ag-
2 grievéd person except to the extent that due
3 process requires discovery or disclosure.

4 “(8) BINDING FINAL ORDERS.—Orders grant-
5 ing motions or requests under paragraph (6), deci-
6 sions under this section that an order was not law-
7 fully authorized or served, and orders of the United
8 States district court requiring review or granting
9 disclosure of applications, orders, or other related
10 materials shall be final orders and binding upon all
11 courts of the United States and the several States
12 except a United States court of appeals or the Su-
13 preme Court.”.

14 (e) DEFINITION.—Title V of the Foreign Intelligence
15 Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is
16 amended by adding at the end the following:

17 **“SEC. 503. DEFINITIONS.**

18 “In this title, the following definitions apply:

19 “(1) IN GENERAL.—Except as provided in this
20 section, terms used in this title that are also used
21 in title I shall have the meanings given such terms
22 by section 101.

23 “(2) AGGRIEVED PERSON.—The term ‘ag-
24 grievéd person’ means any person whose tangible

1 things or information were acquired pursuant to an
2 order under this title.”.

3 **SEC. 10. JUDICIAL REVIEW OF SECTION 215 ORDERS.**

4 Section 501(f) of the Foreign Intelligence Surveil-
5 lance Act of 1978 (50 U.S.C. 1861) is amended to read
6 as follows:

7 “(f) JUDICIAL REVIEW.—

8 “(1) ORDER FOR PRODUCTION.—Not later than
9 20 days after the service upon any person of an
10 order pursuant to subsection (c), or at any time be-
11 fore the return date specified in the order, whichever
12 period is shorter, such person may file, in the court
13 established under section 103(a) or in the district
14 court of the United States for the judicial district
15 within which such person resides, is found, or trans-
16 acts business, a petition for such court to modify or
17 set aside such order. The time allowed for compli-
18 ance with the order in whole or in part as deemed
19 proper and ordered by the court shall not run during
20 the pendency of such petition in the court. Such pe-
21 tition shall specify each ground upon which the peti-
22 tioner relies in seeking relief, and may be based
23 upon any failure of such order to comply with the
24 provisions of this section or upon any constitutional
25 or other legal right or privilege of such person.

1 “(2) NONDISCLOSURE ORDER.—

2 “(A) IN GENERAL.—A person prohibited
3 from disclosing information under subsection
4 (d) may file, in the courts established by section
5 103(a) or in the district court of the United
6 States for the judicial district within which such
7 person resides, is found, or transacts business,
8 a petition for such court to set aside the non-
9 disclosure requirement. Such petition shall
10 specify each ground upon which the petitioner
11 relies in seeking relief, and may be based upon
12 any failure of the nondisclosure requirement to
13 comply with the provisions of this section or
14 upon any constitutional or other legal right or
15 privilege of such person.

16 “(B) STANDARD.—The court shall modify
17 or set aside the nondisclosure requirement un-
18 less the court determines that—

19 “(i) there is reason to believe that dis-
20 closure of the information subject to the
21 nondisclosure requirement will result in—

22 “(I) endangering the life or phys-
23 ical safety of any person;

24 “(II) flight from prosecution;

1 “(III) destruction of or tam-
2 pering with evidence;

3 “(IV) intimidation of potential
4 witnesses;

5 “(V) interference with diplomatic
6 relations; or

7 “(VI) otherwise seriously endan-
8 gering the national security of the
9 United States by alerting a target, a
10 target’s associates, or the foreign
11 power of which the target is an agent,
12 of the Government’s interest in the
13 target; and

14 “(ii) the nondisclosure requirement is
15 narrowly tailored to address the specific
16 harm identified by the Government.

17 “(3) RULEMAKING.—

18 “(A) IN GENERAL.—Not later than 180
19 days after the date of enactment of the Na-
20 tional Security Letter Reform Act of 2007, the
21 courts established pursuant to section 103(a)
22 shall establish such rules and procedures and
23 take such actions as are reasonably necessary to
24 administer their responsibilities under this sub-
25 section.

1 “(B) REPORTING.—Not later than 30 days
2 after promulgating rules and procedures under
3 subparagraph (A), the courts established pursu-
4 ant to section 103(a) shall transmit a copy of
5 the rules and procedures, unclassified to the
6 greatest extent possible (with a classified annex,
7 if necessary), to the Committee on the Judici-
8 ary and the Select Committee on Intelligence of
9 the Senate and the Committee on the Judiciary
10 and the Permanent Select Committee on Intel-
11 ligence of the House of Representatives.

12 “(4) DISCLOSURES TO PETITIONERS.—In mak-
13 ing determinations under this subsection, unless the
14 court finds that such disclosure would not assist in
15 determining any legal or factual issue pertinent to
16 the case, the court shall disclose to the petitioner,
17 the counsel of the petitioner, or both, under the pro-
18 cedures and standards provided in the Classified In-
19 formation Procedures Act (18 U.S.C. App.) or other
20 applicable law, portions of the application, order, or
21 other related materials.”.

22 **SEC. 11. RESOURCES FOR FISA APPLICATIONS.**

23 (a) ELECTRONIC FILING.—

24 (1) IN GENERAL.—The Department of Justice
25 shall establish a secure electronic system for the sub-

1 mission of documents and other information to the
2 court established under section 103(a) of the For-
3 eign Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1803) relating to applications for orders
5 under chapter 36 of title 50, authorizing electronic
6 surveillance, physical searches, the use of pen reg-
7 ister and trap and trace devices, and the production
8 of tangible things.

9 (2) FUNDING SOURCE.—Section 1103(4) of the
10 Violence Against Women and Department of Justice
11 Reauthorization Act of 2005 is amended—

12 (A) in subparagraph (C), by striking
13 “and” after the semicolon;

14 (B) in subparagraph (D), by striking the
15 period and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(E) \$5,000,000 for the implementation of
18 the secure electronic filing system established
19 by Section 11(a)(1) of the National Security
20 Letter Reform Act.”.

21 (b) PERSONNEL AND INFORMATION TECHNOLOGY
22 NEEDS.—

23 (1) OFFICE OF INTELLIGENCE POLICY AND RE-
24 VIEW.—

1 (A) IN GENERAL.—The Office of Intel-
2 ligence Policy and Review of the Department of
3 Justice may hire personnel and procure infor-
4 mation technology, as needed, to ensure the
5 timely and efficient processing of applications
6 to the court established under section 103(a) of
7 the Foreign Intelligence Surveillance Act of
8 1978 (50 U.S.C. 1803).

9 (B) FUNDING SOURCE.—

10 (i) Section 1103(4) of the Violence
11 Against Women and Department of Jus-
12 tice Reauthorization Act of 2005 is amend-
13 ed—

14 (I) in subparagraph (D), by
15 striking “and” after the semicolon;

16 (II) in subparagraph (E), by
17 striking the period and inserting “;
18 and”; and

19 (III) by adding at the end the
20 following:

21 “(F) not to exceed \$3,000,000 for the per-
22 sonnel and information technology as specified
23 in Section 11(b)(1)(A) of the National Security
24 Letter Reform Act.”.

1 (ii) Section 1104(4) of the Violence
2 Against Women and Department of Jus-
3 tice Reauthorization Act of 2005 is amend-
4 ed—

5 (I) in subparagraph (C), by strik-
6 ing “and” after the semicolon;

7 (II) in subparagraph (D), by
8 striking the period and inserting “;
9 and”; and

10 (III) by adding at the end the
11 following:

12 “(E) not to exceed \$3,000,000 for the per-
13 sonnel and information technology as specified
14 in Section 11(b)(1)(A) of the National Security
15 Letter Reform Act.”.

16 (2) FBI.—

17 (A) IN GENERAL.—The Federal Bureau of
18 Investigation may hire personnel and procure
19 information technology, as needed, to ensure
20 the timely and efficient processing of applica-
21 tions to the Foreign Intelligence Surveillance
22 Court.

23 (B) FUNDING SOURCE.—

24 (i) Section 1103(7) of the Violence
25 Against Women and Department of Jus-

1 tice Reauthorization Act of 2005 is amend-
 2 ed by inserting before the period the fol-
 3 lowing: “, and which shall include not to
 4 exceed \$3,000,000 for the personnel and
 5 information technology as specified in Sec-
 6 tion 11(b)(2)(A) of the National Security
 7 Letter Reform Act”.

8 (ii) Section 1104(7) of the Violence
 9 Against Women and Department of Jus-
 10 tice Reauthorization Act of 2005 is amend-
 11 ed by inserting before the period the fol-
 12 lowing: “, and which shall include not to
 13 exceed \$3,000,000 for the personnel and
 14 information technology as specified in Sec-
 15 tion 11(b)(2)(A) of the National Security
 16 Letter Reform Act”.

17 **SEC. 12. ENHANCED PROTECTIONS FOR EMERGENCY DIS-**
 18 **CLOSURES.**

19 (a) STORED COMMUNICATIONS ACT.—Section 2702
 20 of title 18, United States Code is amended—

21 (1) in subsection (b)(8), by—

22 (A) striking “, in good faith,” and insert-
 23 ing “reasonably”;

24 (B) inserting “immediate” after “involv-
 25 ing”; and

1 (C) adding before the period: “, subject to
2 the limitations of subsection (d) of this sec-
3 tion;”;

4 (2) in subsection (c)(4) by—

5 (A) striking “. in good faith,” and insert-
6 ing “reasonably”;

7 (B) inserting “immediate” after “involv-
8 ing”; and

9 (C) adding before the period: “, subject to
10 the limitations of subsection (d) of this sec-
11 tion.”;

12 (3) redesignating subsection (d) as subsection
13 (e) and adding after subsection (c) the following:

14 “(d) REQUIREMENT.—

15 “(1) REQUEST.—If a governmental entity re-
16 quests that a provider divulge information pursuant
17 to subsection (b)(8) or (c)(4), the request shall
18 specify that the disclosure is on a voluntary basis
19 and shall document the factual basis for believing
20 that an emergency involving immediate danger of
21 death or serious physical injury to any person re-
22 quires disclosure without delay of the information.

23 “(2) NOTICE TO COURT.—Within 5 days of ob-
24 taining access to records under subsection (b)(8) or
25 (c)(4), the governmental entity shall file with the ap-

1 appropriate court a signed, sworn statement of a su-
 2 pervisory official of a rank designated by the head
 3 of the governmental entity setting forth the grounds
 4 for the emergency access.”; and

5 (4) in subsection (e), as redesignated in para-
 6 graphs (1) and (2), by striking “subsection (b)(8)”
 7 and inserting “subsections (b)(8) and (c)(4)”.

8 (b) RIGHT TO FINANCIAL PRIVACY ACT.—

9 (1) EMERGENCY DISCLOSURES.—The Right to
 10 Financial Privacy Act of 1978 (12 U.S.C. 3401 et
 11 seq.) is amended by inserting after section 1120 the
 12 following:

13 **“SEC. 1121. EMERGENCY DISCLOSURES.**

14 **“(a) IN GENERAL.—**

15 **“(1) STANDARD.—**A financial institution (as
 16 defined in section 1114(c)) may divulge a record de-
 17 scribed in section 1114(a) pertaining to a customer
 18 to a Government authority, if the financial institu-
 19 tion reasonably believes that an emergency involving
 20 immediate danger of death or serious physical injury
 21 to any person requires disclosure without delay of in-
 22 formation relating to the emergency.

23 **“(2) NOTICE IN REQUEST.—**If a Government
 24 authority requests that a financial institution divulge
 25 information pursuant to this section, the request

1 shall specify that the disclosure is on a voluntary
2 basis, and shall document the factual basis for be-
3 lieving that an emergency involving immediate dan-
4 ger of death or serious physical injury to any person
5 requires disclosure without delay of the information.

6 “(b) CERTIFICATE.—In the instances specified in
7 subsection (a), the Government shall submit to the finan-
8 cial institution the certificate required in section 1103(b),
9 signed by a supervisory official of a rank designated by
10 the head of the Government authority.

11 “(c) NOTICE TO COURT.—Within 5 days of obtaining
12 access to financial records under this section, the Govern-
13 ment authority shall file with the appropriate court a
14 signed, sworn statement of a supervisory official of a rank
15 designated by the head of the Government authority set-
16 ting forth the grounds for the emergency access. The Gov-
17 ernment authority shall thereafter comply with the notice
18 provisions of section 1109.

19 “(d) REPORTING OF EMERGENCY DISCLOSURES.—
20 On an annual basis, the Attorney General of the United
21 States shall submit to the Committee on the Judiciary and
22 the Committee on Financial Services of the House of Rep-
23 resentatives and the Committee on the Judiciary and the
24 Committee on Banking, Housing, and Urban Affairs of
25 the Senate a report containing—

1 “(1) the number of individuals for whom the
2 Department of Justice has received voluntary disclo-
3 sures under this section; and

4 “(2) a summary of the bases for disclosure in
5 those instances where—

6 “(A) voluntary disclosures under this sec-
7 tion were made to the Department of Justice;
8 and

9 “(B) the investigation pertaining to those
10 disclosures was closed without the filing of
11 criminal charges.”.

12 (2) CONFORMING AMENDMENTS.—The Right to
13 Financial Privacy Act of 1978 (12 U.S.C. 3401 et
14 seq.) is amended—

15 (A) in section 1102 (12 U.S.C. 3402), by
16 striking “or 1114” and inserting “1114, or
17 1121”; and

18 (B) in section 1109(c) (12 U.S.C.
19 3409(c)), by striking “1114(b)” and inserting
20 “1121”.

21 (c) FAIR CREDIT REPORTING ACT.—Section 627 of
22 the Fair Credit Reporting Act (15 U.S.C. 1681v) is
23 amended to read as follows:

24 **“SEC. 627. EMERGENCY DISCLOSURES.**

25 “(a) IN GENERAL.—

1 “(1) STANDARD.—A consumer reporting agency
2 may divulge identifying information respecting any
3 consumer, limited to the name, address, former ad-
4 dresses, places of employment, or former places of
5 employment of the consumer, to a Government agen-
6 cy, if the consumer reporting agency reasonably be-
7 lieves that an emergency involving immediate danger
8 of death or serious physical injury to any person re-
9 quires disclosure without delay of information relat-
10 ing to the emergency.

11 “(2) NOTICE IN REQUEST.—If a Government
12 agency requests that a consumer reporting agency
13 divulge information pursuant to this section, the re-
14 quest shall specify that the disclosure is on a vol-
15 untary basis, and shall document the factual basis
16 for believing that an emergency involving immediate
17 danger of death or serious physical injury to any
18 person requires disclosure without delay of the infor-
19 mation.

20 “(b) NOTICE TO COURT.—Within 5 days of obtaining
21 access to identifying information under this section, the
22 Government agency shall file with the appropriate court
23 a signed, sworn statement of a supervisory official of a
24 rank designated by the head of the Government agency
25 setting forth the grounds for the emergency access.

1 “(c) REPORTING OF EMERGENCY DISCLOSURES.—
2 On an annual basis, the Attorney General of the United
3 States shall submit to the Committee on the Judiciary and
4 the Committee on Financial Services of the House of Rep-
5 resentatives and the Committee on the Judiciary and the
6 Committee on Banking, Housing, and Urban Affairs of
7 the Senate a report containing—

8 “(1) the number of individuals for whom the
9 Department of Justice has received voluntary disclo-
10 sures under this section; and

11 “(2) a summary of the bases for disclosure in
12 those instances where—

13 “(A) voluntary disclosures under this sec-
14 tion were made to the Department of Justice;
15 and

16 “(B) the investigation pertaining to those
17 disclosures was closed without the filing of
18 criminal charges.”.

19 **SEC. 13. CLARIFICATION REGARDING DATA RETENTION.**

20 Subsection 2703(f) of title 18, United States Code,
21 is amended by adding at the end the following:

22 “(3) A provider of wire or electronic commu-
23 nications services or a remote computing service who
24 has received a request under this subsection shall
25 not disclose the records referred to in paragraph (1)

1 until such provider has received a court order or
2 other process.”.

3 **SEC. 14. LEAST INTRUSIVE MEANS.**

4 (a) GUIDELINES.—

5 (1) IN GENERAL.—The Attorney General shall
6 issue guidelines (consistent with Executive Order
7 12333 or successor order) instructing that when
8 choices are available between the use of information
9 collection methods in national security investigations
10 that are more or less intrusive, the least intrusive
11 collection techniques feasible are to be used.

12 (2) SPECIFIC COLLECTION TECHNIQUES.—The
13 guidelines required by this section shall provide
14 guidance with regard to specific collection tech-
15 niques, including the use of national security letters,
16 considering such factors as—

17 (A) the effect on the privacy of individuals;

18 (B) the potential damage to reputation of
19 individuals; and

20 (C) any special First Amendment concerns
21 relating to a potential recipient of a National
22 Security Letter or other legal process, including
23 a direction that prior to issuing such National
24 Security Letter or other legal process to a li-
25 brary or bookseller, investigative procedures

1 aimed at obtaining the relevant information
2 from entities other than a library or bookseller
3 be utilized and have failed, or reasonably ap-
4 pear to be unlikely to succeed if tried or endan-
5 ger lives if tried.

6 (b) DEFINITIONS.—In this section:

7 (1) BOOKSELLER.—The term “bookseller”
8 means a person or entity engaged in the sale, rental,
9 or delivery of books, journals, magazines, or other
10 similar forms of communication in print or digitally.

11 (2) LIBRARY.—The term “library” means a li-
12 brary (as that term is defined in section 213(2) of
13 the Library Services and Technology Act (20 U.S.C.
14 9122(2))) whose services include access to the Inter-
15 net, books, journals, magazines, newspapers, or
16 other similar forms of communication in print or
17 digitally to patrons for their use, review, examina-
18 tion, or circulation.

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