

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, and Mr. KAUFMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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”.

6 **SEC. 2. SUNSETS.**

7 (a) SECTIONS 206 AND 215 SUNSET.—

8 (1) IN GENERAL.—Section 102(b)(1) of the
9 USA PATRIOT Improvement and Reauthorization

1 Act of 2005 (Public Law 109–177; 50 U.S.C. 1805
2 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862
3 note) is amended by striking “2009” and inserting
4 “2013”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) IN GENERAL.—Section 601(a)(1)(D)
7 of the Foreign Intelligence Surveillance Act of
8 1978 (50 U.S.C. 1871(a)(1)(D)) is amended by
9 striking “section 501;” and inserting “section
10 502 or under section 501 pursuant to section
11 102(b)(2) the USA PATRIOT Improvement
12 and Reauthorization 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
20 such section 601(a) shall be applied as if it read
21 as follows:

22 ‘(D) access to records under section 502 or
23 under section 501 pursuant to section
24 102(b)(2) the USA PATRIOT Improvement

1 and Reauthorization Act of 2005 (Public Law
2 109–177; 50 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 INDI-
7 VIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.—

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

12 “(b) SUNSET.—

13 “(1) REPEAL.—Subparagraph (C) of section
14 101(b)(1) of the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1801(b)(1)), as added by
16 subsection (a), is repealed effective December 31,
17 2013.

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

1 fense that began or occurred before December 31,
2 2013.”.

3 (2) CONFORMING AMENDMENT.—

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

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

15 (c) NATIONAL SECURITY LETTERS.—

16 (1) IN GENERAL.—Effective on December 31,
17 2013, the following provisions of law are repealed:

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

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

23 (C) Subsections (a) and (b) of section 626
24 of the Fair Credit Reporting Act (15 U.S.C.
25 1681u).

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

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

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

12 (3) TECHNICAL AND CONFORMING AMEND-
13 MENTS.—

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

16 (i) in the table of sections for chapter
17 121, by striking the item relating to sec-
18 tion 2709;

19 (ii) by striking section 3511; and

20 (iii) in the table of sections for chap-
21 ter 223, by striking the item relating to
22 section 3511.

23 (B) FAIR CREDIT REPORTING ACT.—The
24 Fair Credit Reporting Act (15 U.S.C. 1681) is
25 amended—

1 (i) in section 626 (15 U.S.C.
2 1681u)—

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

10 (II) in subsection (h)(1), by
11 striking “subsections (a), (b), and
12 (c)” and inserting “subsection (c)”;
13 and

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

16 (C) NATIONAL SECURITY ACT OF 1947.—
17 The National Security Act of 1947 (50 U.S.C.
18 401 et seq.) is amended—

19 (i) in section 507(b) (50 U.S.C.
20 415b(b))—

21 (I) by striking paragraph (5);
22 and

23 (II) by redesignating paragraph
24 (6) as paragraph (5); and

1 (ii) in the table of contents, by strik-
2 ing the item relating to section 802.

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

6 **SEC. 3. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS**
7 **FOR ACCESS TO TANGIBLE THINGS.**

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

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

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

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

19 “(i) are relevant to an authorized in-
20 vestigation (other than a threat assess-
21 ment) conducted in accordance with sub-
22 section (a)(2) to obtain foreign intelligence
23 information not concerning a United
24 States person or to protect against inter-

1 national terrorism or clandestine intel-
2 ligence activities; and

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

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

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

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

14 (3) in subsection (c)—

15 (A) in paragraph (1)—

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

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

23 (B) in paragraph (2)—

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

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

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

6 “(F) shall direct that the minimization
 7 procedures be followed.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

19 **SEC. 4. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS**
 20 **FOR PEN REGISTERS AND TRAP AND TRACE**
 21 **DEVICES FOR FOREIGN INTELLIGENCE PUR-**
 22 **POSES.**

23 (a) IN GENERAL.—

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

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

6 (B) by striking paragraph (2) and insert-
7 ing the following:

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

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

18 “(B)(i) pertains to a foreign power or an
19 agent of a foreign power;

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

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

1 “(3) a statement of proposed minimization pro-
2 cedures.”.

3 (2) MINIMIZATION.—

4 (A) DEFINITION.—Section 401 of the For-
5 eign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1841) is amended by adding at the end
7 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
13 of a pen register or trap and trace device, to
14 minimize the acquisition and retention, and pro-
15 hibit the dissemination, of nonpublicly available
16 information concerning unconsenting United
17 States persons consistent with the need of the
18 United States to obtain, produce, and dissemi-
19 nate foreign intelligence information;

20 “(B) procedures that require that nonpub-
21 licly available information, which is not foreign
22 intelligence information, as defined in section
23 101(e)(1), shall not be disseminated in a man-
24 ner that identifies any United States person,
25 without such person’s consent, unless such per-

1 son's identity is necessary to understand foreign
2 intelligence information or assess its impor-
3 tance; and

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

11 (B) PEN REGISTERS AND TRAP AND TRACE
12 DEVICES.—Section 402 of the Foreign Intel-
13 ligence Surveillance Act of 1978 (50 U.S.C.
14 1842) is amended—

15 (i) in subsection (d)—

16 (I) in paragraph (1), by inserting
17 “, and that the proposed minimization
18 procedures meet the definition of
19 minimization procedures under this
20 title” before the period at the end;
21 and

22 (II) in paragraph (2)(B)—

23 (aa) in clause (ii)(II), by
24 striking “and” after the semi-
25 colon; and

1 (bb) by adding at the end
2 the following:

3 “(iv) the minimization procedures be
4 followed; and”; and

5 (ii) by adding at the end the fol-
6 lowing:

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

14 (C) EMERGENCIES.—Section 403 of the
15 Foreign Intelligence Surveillance Act of 1978
16 (50 U.S.C. 1843) is amended—

17 (i) by redesignating subsection (c) as
18 (d); and

19 (ii) by inserting after subsection (b)
20 the following:

21 “(c) If the Attorney General authorizes the emer-
22 gency installation and use of a pen register or trap and
23 trace device under this section, the Attorney General shall
24 require that the minimization procedures required by this
25 title for the issuance of a judicial order be followed.”.

1 (D) USE OF INFORMATION.—Section
2 405(a) of the Foreign Intelligence Surveillance
3 Act of 1978 (50 U.S.C. 1845(a)) is amended by
4 striking “provisions of” and inserting “mini-
5 mization procedures required under”.

6 **SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECUR-**
7 **RITY LETTERS.**

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

11 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

12 “(1) PROHIBITION.—

13 “(A) IN GENERAL.—If a certification is
14 issued under subparagraph (B) and notice of
15 the right to judicial review under paragraph (4)
16 is provided, no wire or electronic communica-
17 tion service provider, or officer, employee, or
18 agent thereof, that receives a request under
19 subsection (a), shall disclose to any person the
20 particular information specified in the certifi-
21 cation during the time period to which the cer-
22 tification applies, which may be not longer than
23 1 year.

24 “(B) CERTIFICATION.—The requirements
25 of subparagraph (A) shall apply if the Director

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

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

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

13 “(iii) interference with diplomatic re-
14 lations; or

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

17 “(2) EXCEPTION.—

18 “(A) IN GENERAL.—A wire or electronic
19 communication service provider, or officer, em-
20 ployee, or agent thereof, that receives a request
21 under subsection (a) may disclose information
22 otherwise subject to any applicable nondisclo-
23 sure requirement to—

1 “(i) those persons to whom disclosure
2 is necessary in order to comply with the re-
3 quest;

4 “(ii) an attorney in order to obtain
5 legal advice or assistance regarding the re-
6 quest; or

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

10 “(B) 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)
15 in the same manner as the person to whom the
16 request is issued.

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

22 “(3) EXTENSION.—The Director of the Federal
23 Bureau of Investigation, or a designee of the Direc-
24 tor whose rank shall be no lower than Deputy As-
25 sistant Director at Bureau headquarters or a Special

1 Agent in Charge in a Bureau field office, may ex-
2 tend a nondisclosure requirement for additional peri-
3 ods of not longer than 1 year if, at the time of each
4 extension, a new certification is made under para-
5 graph (1)(B) and notice is provided to the recipient
6 of the applicable request that the nondisclosure re-
7 quirement has been extended and the recipient has
8 the right to judicial review of the nondisclosure re-
9 quirement.

10 “(4) RIGHT TO JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—A wire or electronic
12 communications service provider that receives a
13 request under subsection (a) shall have the
14 right to judicial review of any applicable non-
15 disclosure requirement and any extension there-
16 of.

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 this title.

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 Federal Bureau
19 of Investigation shall promptly notify the wire or
20 electronic service provider, or officer, employee, or
21 agent thereof, subject to the nondisclosure require-
22 ment that the nondisclosure requirement is no longer
23 in effect.”.

24 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND
25 CREDIT REPORTS.—Section 626 of the Fair Credit Re-

1 porting Act (15 U.S.C. 1681u) is amended by striking
2 subsection (d) and inserting the following:

3 “(d) PROHIBITION OF CERTAIN DISCLOSURE.—

4 “(1) PROHIBITION.—

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

15 “(B) CERTIFICATION.—The requirements
16 of subparagraph (A) shall apply if the Director
17 of the Federal Bureau of Investigation, or a
18 designee of the Director whose rank shall be no
19 lower than Deputy Assistant Director at Bu-
20 reau headquarters or a Special Agent in Charge
21 of a Bureau field office, certifies that, absent a
22 prohibition of disclosure under this subsection,
23 there may result—

24 “(i) a danger to the national security
25 of the United States;

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

4 “(iii) interference with diplomatic re-
5 lations; or

6 “(iv) danger to the life or physical
7 safety of any person.

8 “(2) EXCEPTION.—

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

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

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

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

24 “(B) NONDISCLOSURE REQUIREMENT.—A
25 person to whom disclosure is made under sub-

1 paragraph (A) shall be subject to the nondisclo-
2 sure requirements applicable to a person to
3 whom a request or order is issued under sub-
4 section (a), (b), or (c) in the same manner as
5 the person to whom the request or order is
6 issued.

7 “(C) NOTICE.—Any recipient that dis-
8 closes to a person described in subparagraph
9 (A) information otherwise subject to a non-
10 disclosure requirement shall inform the 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 Deputy As-
15 sistant Director at Bureau headquarters or a Special
16 Agent in Charge in a Bureau field office, may ex-
17 tend a nondisclosure requirement for additional peri-
18 ods of not longer than 1 year if, at the time of each
19 extension, a new certification is made under para-
20 graph (1)(B) and notice is provided to the recipient
21 of the applicable request or order that the nondisclo-
22 sure requirement has been extended and the recipi-
23 ent has the right to judicial review of the nondisclo-
24 sure requirement.

25 “(4) 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
4 to judicial review of any applicable nondisclo-
5 sure requirement and any extension thereof.

6 “(B) TIMING.—

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

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

22 “(C) INITIATION OF PROCEEDINGS.—If a
23 recipient of a request or order under subsection
24 (a), (b), or (c) makes a notification under sub-
25 paragraph (B), the Government shall initiate

1 judicial review under the procedures established
2 in section 3511 of title 18, United States Code.

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

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

16 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

17 “(1) PROHIBITION.—

18 “(A) IN GENERAL.—If a certification is
19 issued under subparagraph (B) and notice of
20 the right to judicial review under paragraph (4)
21 is provided, no consumer reporting agency, or
22 officer, employee, or agent thereof, that receives
23 a request under subsection (a), shall disclose to
24 any person the particular information specified
25 in the certification during the time period to

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

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

11 “(i) a danger to the national security
12 of the United States;

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

16 “(iii) interference with diplomatic re-
17 lations; or

18 “(iv) danger to the life or physical
19 safety of any person.

20 “(2) EXCEPTION.—

21 “(A) IN GENERAL.—A consumer reporting
22 agency, or officer, employee, or agent thereof,
23 that receives a request under subsection (a)
24 may disclose information otherwise subject to
25 any applicable nondisclosure requirement to—

1 “(i) those persons to whom disclosure
2 is necessary in order to comply with the re-
3 quest;

4 “(ii) an attorney in order to obtain
5 legal advice or assistance regarding the re-
6 quest; or

7 “(iii) other persons as permitted by
8 the head of the government agency author-
9 ized to conduct investigations of intel-
10 ligence or counterintelligence activities or
11 analysis related to international terrorism,
12 or a designee.

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

13 “(4) RIGHT TO JUDICIAL REVIEW.—

14 “(A) IN GENERAL.—A consumer reporting
15 agency that receives a request under subsection
16 (a) shall have the right to judicial review of any
17 applicable nondisclosure requirement and any
18 extension thereof.

19 “(B) TIMING.—

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

1 days after the date of receipt of the re-
2 quest.

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

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

17 “(5) TERMINATION.—If the facts supporting a
18 nondisclosure requirement cease to exist prior to the
19 applicable time period of the nondisclosure require-
20 ment, an appropriate official of the government
21 agency authorized to conduct investigations of intel-
22 ligence or counterintelligence activities or analysis
23 related to international terrorism shall promptly no-
24 tify the consumer reporting agency, or officer, em-
25 ployee, or agent thereof, subject to the nondisclosure

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

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

7 “(D) PROHIBITION OF CERTAIN DISCLO-
8 SURE.—

9 “(i) PROHIBITION.—

10 “(I) IN GENERAL.—If a certifi-
11 cation is issued under subclause (II)
12 and notice of the right to judicial re-
13 view under clause (iv) is provided, no
14 financial institution, or officer, em-
15 ployee, or agent thereof, that receives
16 a request under subparagraph (A),
17 shall disclose to any person the par-
18 ticular information specified in the
19 certification during the time period to
20 which the certification applies, which
21 may be not longer than 1 year.

22 “(II) CERTIFICATION.—The re-
23 quirements of subclause (I) shall
24 apply if the Director of the Federal
25 Bureau of Investigation, or a designee

1 of the Director whose rank shall be no
2 lower than Deputy Assistant Director
3 at Bureau headquarters or a Special
4 Agent in Charge of a Bureau field of-
5 fice, certifies that, absent a prohibi-
6 tion of disclosure under this subpara-
7 graph, there may result—

8 “(aa) a danger to the na-
9 tional security of the United
10 States;

11 “(bb) interference with a
12 criminal, counterterrorism, or
13 counterintelligence investigation;

14 “(cc) interference with diplo-
15 matic relations; or

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

18 “(ii) EXCEPTION.—

19 “(I) IN GENERAL.—A financial
20 institution, or officer, employee, or
21 agent thereof, that receives a request
22 under subparagraph (A) may disclose
23 information otherwise subject to any
24 applicable nondisclosure requirement
25 to—

1 “(aa) those persons to whom
2 disclosure is necessary in order to
3 comply with the request;

4 “(bb) an attorney in order
5 to obtain legal advice or assist-
6 ance regarding the request; or

7 “(cc) other persons as per-
8 mitted by the Director of the
9 Federal Bureau of Investigation
10 or the designee of the Director.

11 “(II) NONDISCLOSURE REQUIRE-
12 MENT.—A person to whom disclosure
13 is made under subclause (I) shall be
14 subject to the nondisclosure require-
15 ments applicable to a person to whom
16 a request is issued under subpara-
17 graph (A) in the same manner as the
18 person to whom the request is issued.

19 “(III) NOTICE.—Any recipient
20 that discloses to a person described in
21 subclause (I) information otherwise
22 subject to a nondisclosure requirement
23 shall inform the person of the applica-
24 ble nondisclosure requirement.

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

16 “(iv) RIGHT TO JUDICIAL REVIEW.—

17 “(I) IN GENERAL.—A financial
18 institution that receives a request
19 under subparagraph (A) shall have
20 the right to judicial review of any ap-
21 plicable nondisclosure requirement
22 and any extension thereof.

23 “(II) TIMING.—

24 “(aa) IN GENERAL.—A re-
25 quest under subparagraph (A)

1 shall state that if the recipient
2 wishes to have a court review a
3 nondisclosure requirement, the
4 recipient shall notify the Govern-
5 ment not later than 21 days after
6 the date of receipt of the request.

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

17 “(III) INITIATION OF PRO-
18 CEEDINGS.—If a recipient of a re-
19 quest under subparagraph (A) makes
20 a notification under subclause (II),
21 the Government shall initiate judicial
22 review under the procedures estab-
23 lished in section 3511 of title 18,
24 United States Code.

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

11 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
12 AGENCIES.—Section 802 of the National Security Act of
13 1947 (50 U.S.C. 436), is amended by striking subsection
14 (b) and inserting the following:

15 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

16 “(1) PROHIBITION.—

17 “(A) IN GENERAL.—If a certification is
18 issued under subparagraph (B) and notice of
19 the right to judicial review under paragraph (4)
20 is provided, no governmental or private entity,
21 or officer, employee, or agent thereof, that re-
22 ceives a request under subsection (a), shall dis-
23 close to any person the particular information
24 specified in the certification during the time pe-

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

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

9 “(i) a danger to the national security
10 of the United States;

11 “(ii) interference with a criminal,
12 counterterrorism, or counterintelligence in-
13 vestigation;

14 “(iii) interference with diplomatic re-
15 lations; or

16 “(iv) danger to the life or physical
17 safety of any person.

18 “(2) EXCEPTION.—

19 “(A) IN GENERAL.—A governmental or
20 private entity, or officer, employee, or agent
21 thereof, that receives a request under sub-
22 section (a) may disclose information otherwise
23 subject to any applicable nondisclosure require-
24 ment to—

1 “(i) those persons to whom disclosure
2 is necessary in order to comply with the re-
3 quest;

4 “(ii) an attorney in order to obtain
5 legal advice or assistance regarding the re-
6 quest; or

7 “(iii) other persons as permitted by
8 the head of the authorized investigative
9 agency described in subsection (a).

10 “(B) 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)
15 in the same manner as the person to whom the
16 request is issued.

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

22 “(3) EXTENSION.—The head of an authorized
23 investigative agency described in subsection (a), or a
24 designee, may extend a nondisclosure requirement
25 for additional periods of not longer than 1 year if,

1 at the time of each extension, a new certification is
2 made under paragraph (1)(B) and notice is provided
3 to the recipient of the applicable request that the
4 nondisclosure requirement has been extended and
5 the recipient has the right to judicial review of the
6 nondisclosure requirement.

7 “(4) RIGHT TO JUDICIAL REVIEW.—

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

13 “(B) TIMING.—

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

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

1 ment, the recipient shall notify the Govern-
2 ment not later than 21 days after the date
3 of receipt of the notice.

4 “(C) INITIATION OF PROCEEDINGS.—If a
5 recipient of a request under subsection (a)
6 makes a notification under subparagraph (B),
7 the Government shall initiate judicial review
8 under the procedures established in section
9 3511 of title 18, United States Code.

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

19 **SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL**
20 **SECURITY LETTERS.**

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

24 (1) in subparagraph (A)—

25 (A) in clause (i)—

1 (i) by striking “a production order”
2 and inserting “a production order or non-
3 disclosure order”; and

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

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

8 (2) in subparagraph (C)—

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

10 (B) by redesignating clause (iii) as clause
11 (ii).

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

15 “(b) NONDISCLOSURE.—

16 “(1) IN GENERAL.—

17 “(A) NOTICE.—If a recipient of a request
18 or order for a report, records, or other informa-
19 tion under section 2709 of this title, section
20 626 or 627 of the Fair Credit Reporting Act
21 (15 U.S.C. 1681u and 1681v), section 1114 of
22 the Right to Financial Privacy Act (12 U.S.C.
23 3414), or section 802 of the National Security
24 Act of 1947 (50 U.S.C. 436), wishes to have a
25 court review a nondisclosure requirement im-

1 posed in connection with the request, the recipi-
2 ent shall notify the Government not later than
3 21 days after the date of receipt of the request
4 or of notice that an applicable nondisclosure re-
5 quirement has been extended.

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

20 “(C) CONSIDERATION.—A district court of
21 the United States that receives an application
22 under subparagraph (B) should rule expedi-
23 tiously, and may issue a nondisclosure order for
24 a period of not longer than 1 year, unless the
25 facts justify a longer period of nondisclosure.

1 “(D) DENIAL.—If a district court of the
2 United States rejects an application for a non-
3 disclosure order or extension thereof, the non-
4 disclosure requirement shall no longer be in ef-
5 fect.

6 “(2) APPLICATION CONTENTS.—An application
7 for a nondisclosure order or extension thereof under
8 this subsection shall include—

9 “(A) a statement of the facts indicating
10 that, absent a prohibition of disclosure under
11 this subsection, there may result—

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

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

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

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

21 “(B) the time period during which the
22 Government believes the nondisclosure require-
23 ment should apply.

24 “(3) STANDARD.—A district court of the
25 United States may issue a nondisclosure require-

1 ment order or extension thereof under this sub-
2 section if the court determines that there is reason
3 to believe that disclosure of the information subject
4 to the nondisclosure requirement during the applica-
5 ble time period will result in—

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

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

10 “(C) interference with diplomatic relations;

11 or

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

14 “(4) RENEWAL.—A nondisclosure order under
15 this subsection may be renewed for additional peri-
16 ods of not longer than 1 year, unless the facts of the
17 case justify a longer period of nondisclosure, upon
18 submission of an application meeting the require-
19 ments of paragraph (2), and a determination by the
20 court that the circumstances described in paragraph
21 (3) continue to exist.”.

22 (c) MINIMIZATION.—Section 501(g) of the Foreign
23 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(g))
24 is amended—

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

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

14 **SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL**
15 **AND TRANSACTIONAL RECORDS.**

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

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

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

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

4 (1) in subsection (a), by striking “has deter-
5 mined in writing, that such information is sought
6 for” and inserting “provides to the consumer report-
7 ing agency a written determination that includes a
8 statement of facts showing that there are reasonable
9 grounds to believe that such information is relevant
10 to”; and

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

18 (c) DISCLOSURES TO GOVERNMENTAL AGENCIES
19 FOR COUNTERTERRORISM PURPOSES.—Section 627(a) of
20 the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is
21 amended by inserting “that includes a statement of facts
22 showing that there are reasonable grounds to believe” be-
23 fore “that such information is necessary for”.

1 (d) FINANCIAL RECORDS.—Section 1114(a)(5)(A) of
2 the Right to Financial Privacy Act (12 U.S.C.
3 3414(a)(5)(A)) is amended—

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

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

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

16 (1) by redesignating subparagraphs (B), (C),
17 and (D) as subparagraphs (C), (D), and (E), respec-
18 tively; and

19 (2) by inserting after subparagraph (A) the fol-
20 lowing:

21 “(B) shall include a statement of facts showing
22 that there are reasonable grounds to believe, based
23 on credible information, that the person is, or may
24 be, disclosing classified information in an unauthor-

1 ized manner to a foreign power or agent of a foreign
2 power;”.

3 **SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LET-**
4 **TERS.**

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

8 (1) in paragraph (1)—

9 (A) in the matter preceding subparagraph
10 (A), by striking “concerning different United
11 States persons”; and

12 (B) in subparagraph (A), by striking “, ex-
13 cluding the number of requests for subscriber
14 information”;

15 (2) by redesignating paragraph (2) as para-
16 graph (3); and

17 (3) by inserting after paragraph (1) the fol-
18 lowing:

19 “(2) **CONTENT.**—

20 “(A) **IN GENERAL.**—Except as provided in
21 subparagraph (B), each report required under
22 this subsection shall include the total number of
23 requests described in paragraph (1) requiring
24 disclosure of information concerning—

25 “(i) United States persons;

1 “(ii) persons who are not United
2 States persons;

3 “(iii) persons who are the subjects of
4 authorized national security investigations;
5 or

6 “(iv) persons who are not the subjects
7 of authorized national security investiga-
8 tions.

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

16 **SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTEL-**
17 **LIGENCE SURVEILLANCE ACT.**

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

20 (1) by redesignating subsections (b) through (e)
21 as subsections (c) through (f), respectively;

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

24 “(b) PUBLIC REPORT.—The Attorney General shall
25 make publicly available the portion of each report under

1 subsection (a) relating to paragraphs (1) and (2) of sub-
2 section (a).”; and

3 (3) in subsection (e), as so redesignated, by
4 striking “subsection (e)” and inserting “subsection
5 (d)”.

6 **SEC. 10. AUDITS.**

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

10 (1) in subsection (b)—

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

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

16 (2) in subsection (c), by adding at the end the
17 following:

18 “(3) CALENDAR YEARS 2007 AND 2008.—Not
19 later than December 31, 2010, the Inspector Gen-
20 eral of the Department of Justice shall submit to the
21 Committee on the Judiciary and the Permanent Se-
22 lect Committee on Intelligence of the House of Rep-
23 resentatives and the Committee on the Judiciary and
24 the Select Committee on Intelligence of the Senate
25 a report containing the results of the audit con-

1 ducted under this section for calendar years 2007
2 and 2008.

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

14 (3) in subsection (d)—

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

18 (B) in paragraph (2), by striking “and
19 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
20 and

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

23 (b) NATIONAL SECURITY LETTERS.—Section 119 of
24 the USA PATRIOT Improvement and Reauthorization

1 Act of 2005 (Public Law 109–177; 120 Stat. 219) is
2 amended—

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

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

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

17 “(4) CALENDAR YEARS 2009 THROUGH 2012.—
18 Not later than December 31, 2011, and every year
19 thereafter through 2013, the Inspector General of
20 the Department of Justice shall submit to the Com-
21 mittee on the Judiciary and the Permanent Select
22 Committee on Intelligence of the House of Rep-
23 resentatives and the Committee on the Judiciary and
24 the Select Committee on Intelligence of the Senate
25 a report containing the results of the audit con-

1 ducted under this section for the previous calendar
2 year.”;

3 (3) in subsection (d)—

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

7 (B) in paragraph (2), by striking “or
8 (c)(2)” and inserting “(c)(2), (c)(3), or (c)(4)”;
9 and

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

12 (c) PEN REGISTERS AND TRAP AND TRACE DE-
13 VICES.—

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

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

24 (A) an examination of each instance in
25 which the Attorney General or any other attor-

1 ney for the Government submitted an applica-
2 tion for an order or extension of an order under
3 title IV of the Foreign Intelligence Surveillance
4 Act of 1978, including whether the court grant-
5 ed, modified, or denied the application (includ-
6 ing an examination of the basis for any modi-
7 fication or denial);

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

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

22 (D) whether bureaucratic or procedural
23 impediments to the use of pen registers and
24 trap and trace devices under title IV of the
25 Foreign Intelligence Surveillance Act of 1978

1 prevent the Federal Bureau of Investigation
2 from taking full advantage of the authorities
3 provided under that title;

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

10 (F) an examination of the effectiveness of
11 the authority under title IV of the Foreign In-
12 telligence Surveillance Act of 1978 as an inves-
13 tigative tool, including—

14 (i) the importance of the information
15 acquired to the intelligence activities of the
16 Federal Bureau of Investigation or any
17 other department or agency of the Federal
18 Government;

19 (ii) the manner in which the informa-
20 tion is collected, retained, analyzed, and
21 disseminated by the Federal Bureau of In-
22 vestigation, including any direct access to
23 the information provided to any other de-
24 partment, agency, or instrumentality of

1 Federal, State, local, or tribal governments
2 or any private sector entity;

3 (iii) with respect to calendar years
4 2010 through 2012, an examination of the
5 minimization procedures used in relation to
6 pen registers and trap and trace devices
7 under title IV of the Foreign Intelligence
8 Surveillance Act of 1978 and whether the
9 minimization procedures protect the con-
10 stitutional rights of United States persons;

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

24 (v) whether, and how often, the Fed-
25 eral Bureau of Investigation provided in-

1 formation acquired under a pen register or
2 trap and trace device under title IV of the
3 Foreign Intelligence Surveillance Act of
4 1978 to law enforcement authorities for
5 use in criminal proceedings.

6 (3) SUBMISSION DATES.—

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

17 (B) CALENDAR YEARS 2010 THROUGH
18 2012.—Not later than December 31, 2011, and
19 every year thereafter through 2013, the Inspec-
20 tor General of the Department of Justice shall
21 submit to the Committee on the Judiciary and
22 the Select Committee on Intelligence of the
23 Senate and the Committee on the Judiciary and
24 the Permanent Select Committee on Intelligence
25 of the House of Representatives a report con-

1 taining the results of the audit conducted under
2 this section for the previous calendar year.

3 (4) PRIOR NOTICE TO ATTORNEY GENERAL AND
4 DIRECTOR OF NATIONAL INTELLIGENCE; COM-
5 MENTS.—

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

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

19 (5) UNCLASSIFIED FORM.—A report submitted
20 under subparagraph (A) or (B) of paragraph (3)
21 and any comments included under paragraph (4)(B)
22 shall be in unclassified form, but may include a clas-
23 sified annex.

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