

ENHANCING DHS' FUSION CENTER TECHNICAL ASSISTANCE PROGRAM ACT

MARCH 19, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 5099]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5099) to amend the Homeland Security Act of 2002 to establish in the Department of Homeland Security a fusion center technical assistance program, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

|   | Page |
|---|------|
| Purpose and Summary .....   | 2    |
| Background and Need for Legislation .....                                     | 2    |
| Hearings .....  | 3    |
| Committee Consideration .....   | 3    |
| Committee Votes .....   | 3    |
| Committee Oversight Findings .....  | 3    |
| New Budget Authority, Entitlement Authority, and Tax Expenditures .....       | 3    |
| Congressional Budget Office Estimate .....                                    | 3    |
| Statement of General Performance Goals and Objectives .....                   | 4    |
| Duplicative Federal Programs .....  | 4    |
| Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ... | 4    |
| Federal Mandates Statement .....  | 4    |
| Preemption Clarification .....  | 4    |
| Disclosure of Directed Rule Makings .....                                     | 4    |
| Advisory Committee Statement .....  | 4    |
| Applicability to Legislative Branch .....                                     | 5    |
| Section-by-Section Analysis of the Legislation .....                          | 5    |
| Changes in Existing Law Made by the Bill, as Reported .....                   | 6    |

## PURPOSE AND SUMMARY

The Enhancing DHS' Fusion Center Technical Assistance Program Act authorizes and enhances the Department of Homeland Security's fusion center technical assistance program. The program is required to focus on providing the 79 fusion centers across the United States with technical assistance regarding intelligence and information sharing, terrorism prevention activities and the State Homeland Security Grant Program and the Urban Area Security Initiative grant program.

## BACKGROUND AND NEED FOR LEGISLATION

In November 2017, the Committee on Homeland Security Majority Staff released a report entitled "Advancing the Homeland Security Information Sharing Environment: A Review of the National Network of Fusion Centers." The report included a review of the existing fusion center technical assistance program in the Department of Homeland Security (DHS) and recommended that the Office of Intelligence and Analysis (I&A) and the Federal Emergency Management Agency (FEMA) "enhance the support available to fusion centers from FEMA's Technical Assistance Program and address the need for more direct I&A connectivity with the program."<sup>1</sup>

In 2009, despite I&A being the primary DHS agency that interacts with fusion centers, FEMA was given the responsibility for the Department's fusion center technical assistance program. It is the Committee's understanding that the decision to place FEMA in charge of the technical assistance program was largely based on available resources. The current fusion center technical program largely provides training for fusion center personnel on a range of topics, including suspicious activity reporting, new director onboarding, and critical infrastructure and key resources.

The Committee noted in the November 2017 report widespread concerns within the fusion center community that the quality and available resources from current technical assistance program had diminished.<sup>2</sup> Additionally, the Committee found that I&A does not have active engagement with the program.

The bill seeks to address these shortfalls by providing statutory authorization for the program, allowing the Secretary the flexibility to maintain the program at FEMA or transfer it elsewhere in the Department if deemed appropriate, and expanding the mission of the existing office to include technical assistance in other key areas. These include information and guidance regarding homeland security grants, terrorism prevention activities across DHS, and information sharing activities. The latter two activities will result in a more direct role in the program by I&A. Additionally, the bill requires the program to be a repository for best practices relevant to fusion centers.

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<sup>1</sup>The United States House of Representatives Committee on Homeland Security, *Advancing the Homeland Security Information Sharing Environment: A Review of the National Network of Fusion Centers*, at 12, November 2017. <https://homeland.house.gov/wp-content/uploads/2017/11/Committee-on-Homeland-Security-Fusion-Center-Report.pdf>

<sup>2</sup>The United States House of Representatives Committee on Homeland Security, *Advancing the Homeland Security Information Sharing Environment: A Review of the National Network of Fusion Centers*, at 11-12, November 2017.

## HEARINGS

The Committee did not hold any hearing specifically on H.R. 5099, but the Subcommittee on Counterterrorism and Intelligence held several hearings relevant to the bill.

On February 26, 2015, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled “Addressing Remaining Gap in Federal, State, and Local Information Sharing.” The Subcommittee received testimony from Mr. Mike Sena, President, National Fusion Center Association; Chief Richard Beary, President, International Association of Chiefs of Police; and Dr. Cedric Alexander, National President, National Organization of Black Law Enforcement Executives.

On September 8, 2016, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled “State and Local Perspectives on Federal Information Sharing.” The Subcommittee received testimony from Mr. Mike Sena, President, National Fusion Center Association; Chief Richard Beary, Immediate Past President, International Association of Chiefs of Police; and Dr. Cedric Alexander, National President, National Organization of Black Law Enforcement Executives.

## COMMITTEE CONSIDERATION

The Committee met on March 7, 2018, to consider H.R. 5099, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by unanimous consent.

## COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5099.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5099, the Enhancing DHS’ Fusion Center Technical Assistance Program Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall

cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 5099 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The goal of H.R. 5099 is to address the shortfalls of the Department's current fusion center technical assistance program by providing statutory authorization for the program, allowing the Secretary the flexibility to maintain the program at FEMA or transfer it elsewhere in the Department if deemed appropriate, and expanding the mission of the existing office to include technical assistance in other key areas.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 5099 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

#### FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

#### PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 5099 does not preempt any State, local, or Tribal law.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5099 would require no directed rule makings.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short Title.*

This section provides that this bill may be cited as the “Enhancing DHS’ Fusion Center Technical Assistance Program Act”.

*Sec. 2. Fusion Center Technical Assistance Program.*

The section amends section 210A of the Homeland Security Act of 2002 by adding a requirement that the Secretary of Homeland Security establish a fusion center technical assistance program at the Department. In establishing the program, the Secretary is required to consult with the National Network of Fusion Centers and other relevant stakeholders. During the Committee’s review of the National Network of Fusion Centers, staff heard about the widespread concerns with the Department’s current fusion center technical assistance program. Even more troubling, Committee staff heard that I&A, DHS’ primary point of contact for fusion centers, is not actively engage with the current program. This section will result in I&A having a more direct role in the program.

Additionally, the section lays out the specific requirements the technical assistance program must address. These include providing technical assistance regarding intelligence and information sharing and terrorism prevention activities, including training. The Committee’s November 2017 fusion center report mentioned there is a communication breakdown between fusion centers, FEMA’s Grants Programs Directorate, and I&A regarding fusion centers use of the State Homeland Security Grants and Urban Area Security Initiative. While it is unclear what has caused this breakdown, this section addresses the issue by requiring this program to provide technical assistance on the grant programs.

Lastly, the Committee’s report highlighted establishment of the National Network Center of Best Practice. The National Network of Fusion Centers took the initiative and developed a repository like place for best practices on the Homeland Security Information Network—Intel.<sup>3</sup> The National Network Center of Best Practices is still in its infancy and the true impact of this repository is still unknown. This section will build on this initiative by ensuring Department’s fusion center technical assistance program also make available best practices on operations, sharing and analysis of homeland security threats, and protecting civil liberty, civil rights, and privacy to the 79 fusion centers.

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<sup>3</sup>The Homeland Security Information Network—Intelligence is a trusted and secure network for Federal, State, local, territorial, tribal partners to share sensitive but unclassified information. The program is operated by the Department of Homeland Security and fusion centers, as well as other vetted stakeholders, are provided access.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**HOMELAND SECURITY ACT OF 2002**

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**TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION****Subtitle A—Information and Analysis and Infrastructure Protection; Access to Information**

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**SEC. 210A. DEPARTMENT OF HOMELAND SECURITY STATE, LOCAL, AND REGIONAL FUSION CENTER INITIATIVE.**

(a) ESTABLISHMENT.—The Secretary, in consultation with the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), the Attorney General, the Privacy Officer of the Department, the Officer for Civil Rights and Civil Liberties of the Department, and the Privacy and Civil Liberties Oversight Board established under section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (5 U.S.C. 601 note), shall establish a Department of Homeland Security State, Local, and Regional Fusion Center Initiative to establish partnerships with State, local, and regional fusion centers.

(b) DEPARTMENT SUPPORT AND COORDINATION.—Through the Department of Homeland Security State, Local, and Regional Fusion Center Initiative, and in coordination with the principal officials of participating State, local, or regional fusion centers and the officers designated as the Homeland Security Advisors of the States, the Secretary shall—

- (1) provide operational and intelligence advice and assistance to State, local, and regional fusion centers;
- (2) support efforts to include State, local, and regional fusion centers into efforts to establish an information sharing environment;
- (3) conduct tabletop and live training exercises to regularly assess the capability of individual and regional networks of State, local, and regional fusion centers to integrate the efforts of such networks with the efforts of the Department;
- (4) coordinate with other relevant Federal entities engaged in homeland security-related activities;
- (5) provide analytic and reporting advice and assistance to State, local, and regional fusion centers;

(6) review information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, that is gathered by State, local, and regional fusion centers, and to incorporate such information, as appropriate, into the Department's own such information;

(7) provide management assistance to State, local, and regional fusion centers;

(8) serve as a point of contact to ensure the dissemination of information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information;

(9) facilitate close communication and coordination between State, local, and regional fusion centers and the Department;

(10) provide State, local, and regional fusion centers with expertise on Department resources and operations;

(11) provide training to State, local, and regional fusion centers and encourage such fusion centers to participate in terrorism threat-related exercises conducted by the Department; and

(12) carry out such other duties as the Secretary determines are appropriate.

(c) PERSONNEL ASSIGNMENT.—

(1) IN GENERAL.—The Under Secretary for Intelligence and Analysis shall, to the maximum extent practicable, assign officers and intelligence analysts from components of the Department to participating State, local, and regional fusion centers.

(2) PERSONNEL SOURCES.—Officers and intelligence analysts assigned to participating fusion centers under this subsection may be assigned from the following Department components, in coordination with the respective component head and in consultation with the principal officials of participating fusion centers:

(A) Office of Intelligence and Analysis.

(B) Office of Infrastructure Protection.

(C) Transportation Security Administration.

(D) United States Customs and Border Protection.

(E) United States Immigration and Customs Enforcement.

(F) United States Coast Guard.

(G) Other components of the Department, as determined by the Secretary.

(3) QUALIFYING CRITERIA.—

(A) IN GENERAL.—The Secretary shall develop qualifying criteria for a fusion center to participate in the assigning of Department officers or intelligence analysts under this section.

(B) CRITERIA.—Any criteria developed under subparagraph (A) may include—

(i) whether the fusion center, through its mission and governance structure, focuses on a broad counterterrorism approach, and whether that broad approach is pervasive through all levels of the organization;

(ii) whether the fusion center has sufficient numbers of adequately trained personnel to support a broad counterterrorism mission;

(iii) whether the fusion center has—

(I) access to relevant law enforcement, emergency response, private sector, open source, and national security data; and

(II) the ability to share and analytically utilize that data for lawful purposes;

(iv) whether the fusion center is adequately funded by the State, local, or regional government to support its counterterrorism mission; and

(v) the relevancy of the mission of the fusion center to the particular source component of Department officers or intelligence analysts.

(4) PREREQUISITE.—

(A) INTELLIGENCE ANALYSIS, PRIVACY, AND CIVIL LIBERTIES TRAINING.—Before being assigned to a fusion center under this section, an officer or intelligence analyst shall undergo—

(i) appropriate intelligence analysis or information sharing training using an intelligence-led policing curriculum that is consistent with—

(I) standard training and education programs offered to Department law enforcement and intelligence personnel; and

(II) the Criminal Intelligence Systems Operating Policies under part 23 of title 28, Code of Federal Regulations (or any corresponding similar rule or regulation);

(ii) appropriate privacy and civil liberties training that is developed, supported, or sponsored by the Privacy Officer appointed under section 222 and the Officer for Civil Rights and Civil Liberties of the Department, in consultation with the Privacy and Civil Liberties Oversight Board established under section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (5 U.S.C. 601 note); and

(iii) such other training prescribed by the Under Secretary for Intelligence and Analysis.

(B) PRIOR WORK EXPERIENCE IN AREA.—In determining the eligibility of an officer or intelligence analyst to be assigned to a fusion center under this section, the Under Secretary for Intelligence and Analysis shall consider the familiarity of the officer or intelligence analyst with the State, locality, or region, as determined by such factors as whether the officer or intelligence analyst—

(i) has been previously assigned in the geographic area; or

(ii) has previously worked with intelligence officials or law enforcement or other emergency response providers from that State, locality, or region.

(5) EXPEDITED SECURITY CLEARANCE PROCESSING.—The Under Secretary for Intelligence and Analysis—



(A) shall ensure that each officer or intelligence analyst assigned to a fusion center under this section has the appropriate security clearance to contribute effectively to the mission of the fusion center; and

(B) may request that security clearance processing be expedited for each such officer or intelligence analyst and may use available funds for such purpose.

(6) FURTHER QUALIFICATIONS.—Each officer or intelligence analyst assigned to a fusion center under this section shall satisfy any other qualifications the Under Secretary for Intelligence and Analysis may prescribe.

(d) RESPONSIBILITIES.—An officer or intelligence analyst assigned to a fusion center under this section shall—

(1) assist law enforcement agencies and other emergency response providers of State, local, and tribal governments and fusion center personnel in using information within the scope of the information sharing environment, including homeland security information, terrorism information, and weapons of mass destruction information, to develop a comprehensive and accurate threat picture;

(2) review homeland security-relevant information from law enforcement agencies and other emergency response providers of State, local, and tribal government;

(3) create intelligence and other information products derived from such information and other homeland security-relevant information provided by the Department; and

(4) assist in the dissemination of such products, as coordinated by the Under Secretary for Intelligence and Analysis, to law enforcement agencies and other emergency response providers of State, local, and tribal government, other fusion centers, and appropriate Federal agencies.

(e) BORDER INTELLIGENCE PRIORITY.—

(1) IN GENERAL.—The Secretary shall make it a priority to assign officers and intelligence analysts under this section from United States Customs and Border Protection, United States Immigration and Customs Enforcement, and the Coast Guard to participating State, local, and regional fusion centers located in jurisdictions along land or maritime borders of the United States in order to enhance the integrity of and security at such borders by helping Federal, State, local, and tribal law enforcement authorities to identify, investigate, and otherwise interdict persons, weapons, and related contraband that pose a threat to homeland security.

(2) BORDER INTELLIGENCE PRODUCTS.—When performing the responsibilities described in subsection (d), officers and intelligence analysts assigned to participating State, local, and regional fusion centers under this section shall have, as a primary responsibility, the creation of border intelligence products that—

(A) assist State, local, and tribal law enforcement agencies in deploying their resources most efficiently to help detect and interdict terrorists, weapons of mass destruction, and related contraband at land or maritime borders of the United States;

(B) promote more consistent and timely sharing of border security-relevant information among jurisdictions along land or maritime borders of the United States; and  
 (C) enhance the Department's situational awareness of the threat of acts of terrorism at or involving the land or maritime borders of the United States.

(f) DATABASE ACCESS.—In order to fulfill the objectives described under subsection (d), each officer or intelligence analyst assigned to a fusion center under this section shall have appropriate access to all relevant Federal databases and information systems, consistent with any policies, guidelines, procedures, instructions, or standards established by the President or, as appropriate, the program manager of the information sharing environment for the implementation and management of that environment.

(g) CONSUMER FEEDBACK.—

(1) IN GENERAL.—The Secretary shall create a voluntary mechanism for any State, local, or tribal law enforcement officer or other emergency response provider who is a consumer of the intelligence or other information products referred to in subsection (d) to provide feedback to the Department on the quality and utility of such intelligence products.

(2) REPORT.—Not later than one year after the date of the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, and annually thereafter, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report that includes a description of the consumer feedback obtained under paragraph (1) and, if applicable, how the Department has adjusted its production of intelligence products in response to that consumer feedback.

(h) RULE OF CONSTRUCTION.—

(1) IN GENERAL.—The authorities granted under this section shall supplement the authorities granted under section 201(d) and nothing in this section shall be construed to abrogate the authorities granted under section 201(d).

(2) PARTICIPATION.—Nothing in this section shall be construed to require a State, local, or regional government or entity to accept the assignment of officers or intelligence analysts of the Department into the fusion center of that State, locality, or region.

(i) GUIDELINES.—The Secretary, in consultation with the Attorney General, shall establish guidelines for fusion centers created and operated by State and local governments, to include standards that any such fusion center shall—

(1) collaboratively develop a mission statement, identify expectations and goals, measure performance, and determine effectiveness for that fusion center;

(2) create a representative governance structure that includes law enforcement officers and other emergency response providers and, as appropriate, the private sector;

(3) create a collaborative environment for the sharing of intelligence and information among Federal, State, local, and tribal government agencies (including law enforcement officers and other emergency response providers), the private sector,

and the public, consistent with any policies, guidelines, procedures, instructions, or standards established by the President or, as appropriate, the program manager of the information sharing environment;

(4) leverage the databases, systems, and networks available from public and private sector entities, in accordance with all applicable laws, to maximize information sharing;

(5) develop, publish, and adhere to a privacy and civil liberties policy consistent with Federal, State, and local law;

(6) provide, in coordination with the Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department, appropriate privacy and civil liberties training for all State, local, tribal, and private sector representatives at the fusion center;

(7) ensure appropriate security measures are in place for the facility, data, and personnel;

(8) select and train personnel based on the needs, mission, goals, and functions of that fusion center;

(9) offer a variety of intelligence and information services and products to recipients of fusion center intelligence and information; and

(10) incorporate law enforcement officers, other emergency response providers, and, as appropriate, the private sector, into all relevant phases of the intelligence and fusion process, consistent with the mission statement developed under paragraph (1), either through full time representatives or liaison relationships with the fusion center to enable the receipt and sharing of information and intelligence.

(j) *FUSION CENTER TECHNICAL ASSISTANCE PROGRAM.*—

(1) *ESTABLISHMENT.*—*The Secretary, in consultation with officials from the National Network of Fusion Centers and, to the greatest extent practicable, other relevant stakeholders, shall establish a fusion center technical assistance program.*

(2) *ELEMENTS OF PROGRAM.*—*In carrying out the fusion center technical assistance program established under paragraph (1), the Secretary shall—*

(A) *provide technical assistance to fusion centers regarding—*

(i) *grants administered under sections 2003 and 2004;*

(ii) *terrorism prevention activities; and*

(iii) *intelligence and information sharing;*

(B) *provide to fusion centers notice of any changes to the activities referred to in subparagraph (A);*

(C) *make available best practices regarding—*

(i) *fusion center operations;*

(ii) *information sharing and analysis of homeland security threats, including cyber threats;*

(iii) *protecting privacy, civil rights, and civil liberties; and*

(iv) *such other best practices as the Secretary determines appropriate; and*

(D) *carry out such other activities as the Secretary determines appropriate.*

[(j)] (k) *DEFINITIONS.*—*In this section—*

(1) the term “fusion center” means a collaborative effort of 2 or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity;

(2) the term “information sharing environment” means the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485);

(3) the term “intelligence analyst” means an individual who regularly advises, administers, supervises, or performs work in the collection, gathering, analysis, evaluation, reporting, production, or dissemination of information on political, economic, social, cultural, physical, geographical, scientific, or military conditions, trends, or forces in foreign or domestic areas that directly or indirectly affect national security;

(4) the term “intelligence-led policing” means the collection and analysis of information to produce an intelligence end product designed to inform law enforcement decision making at the tactical and strategic levels; and

(5) the term “terrorism information” has the meaning given that term in section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

**[(k)]** (7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$10,000,000 for each of fiscal years 2008 through 2012, to carry out this section, except for subsection (i), including for hiring officers and intelligence analysts to replace officers and intelligence analysts who are assigned to fusion centers under this section.

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