from Vermont (Mr. LEAHY) were added as cosponsors of amendment No. 2919 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 2931

At the request of Mr. CASEY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 2931 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 2969

At the request of Mr. KERRY, the names of the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of amendment No. 2969 proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 2972

At the request of Mr. MENENDEZ, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of amendment No. 2972 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 2989

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2989 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

At the request of Mr. DORGAN, the names of the Senator from West Virginia (Mr. BYRD) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of amendment No. 2989 intended to be proposed to H.R. 1585, supra.

AMENDMENT NO. 2993

At the request of Ms. LANDRIEU, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of amendment No. 2993 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 3003

At the request of Mrs. MCCASKILL, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of amendment No. 3003 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 3012

At the request of Mr. LAUTENBERG, the names of the Senator from Virginia (Mr. WEBB) and the Senator from Missouri (Mrs. MCCASKILL) were added as cosponsors of amendment No. 3012 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 3017

At the request of Mr. KYL, the names of the Senator from Nevada (Mr. ENSIGN) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of amendment No. 3017 proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD (for himself, Mr. SUNUNU, Mr. DURBIN, Ms. MURKOWSKI, Mr. SALAZAR, and Mr. HAGEL):

S. 2088. A bill to place reasonable limitations on the use of National Security Letters, and for other purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. I am pleased today to introduce the National Security Reform Act of 2007, a bipartisan effort that has the support of Senators who I respect a great deal, and with whom I have worked over the years on the Patriot Act and other issues. It also has the support of organizations and activists across the political spectrum.

This past spring, the Inspector General of the Justice Department issued the results of a congressionally mandated audit, an audit that examined the FBI's implementation of its dramatically expanded authority under the USA PATRIOT Act to issue National Security Letters, or NSLs. The Inspector General found, as he put it: ''widespread and serious misuse of the FBI's national security letter authorities. In many instances, the FBI's misuse of national security letters violated NSL statutes, Attorney General Guidelines, or the FBI's own internal policies.'' A subsequent internal audit conducted by the FBI itself confirmed the IG's findings.

After the IG report came out, the Judiciary Committee heard from the Inspector General himself, who described his conclusions in detail, and from the FBI Director, who talked about some steps the FBI is taking in response to the report.

I appreciate that the FBI agrees with the IG's conclusions and recognizes that it needs to change the way it does business when it comes to NSLs. But in my view, leaving it to the FBI to fix this problem is not enough.

Unfortunately, Congress shares some responsibility for the FBI's troubling implementation of these broad authorities. The FBI's apparently lax attitude and in some cases grave misuse of these potentially very intrusive authorities is attributable in no small part to the USA PATRIOT Act. That flawed legislation greatly expanded the NSL authorities, essentially granting the FBI a blank check to obtain some very sensitive records about Americans, including people not under any suspicion of wrong-doing, without judicial approval. Congress gave the FBI very few rules to follow and failed to adequately remedy those shortcomings when it considered the NSL statutes as part of the Patriot Act reauthorization process.

This Inspector General report proves that ''trust us'' doesn't cut it when it comes to the Government's power to obtain Americans' sensitive business records—without a court order and without any suspicion that they are tied to terrorism or espionage. It was a significant mistake for Congress to grant the Government broad authorities and just keep its fingers crossed that they wouldn't be misused.

Congress has the responsibility to put appropriate limits on government authorities—limits that allow agents to actively pursue criminals, terrorists and spies, but that also protect the privacy of innocent Americans.

In addition, a Federal district court recently struck down one of the new NSL statutes, as modified by the Patriot Act reauthorization legislation enacted in 2006. The court found that a statutory provision permitting the FBI to impose a permanent, blanket nondisclosure order on recipients of NSLs violated the First Amendment.

Congress also has not provided sufficient privacy protections to govern the related authority in Section 215 of the Patriot Act, which permits the Government to obtain court orders for Americans' business records under the Foreign Intelligence Surveillance Act. Often referred to as the ''library'' provision, although it covers all types of business records, Section 215 was one of

the most controversial provisions in the Patriot Act. Unfortunately, Congress did not go nearly far enough in the reauthorization process in addressing the very legitimate privacy and civil liberties concerns that have been raised about this power, including with respect to the low standard the Government has to meet to obtain a Section 215 order, the entirely insufficient judicial review provisions, and the lack of other procedural protections.

All of this is why a bipartisan group of Senators, three Democrats and three Republicans, are introducing the National Security Letter Reform Act of 2007.

The bill places new safeguards on the use of National Security Letters and related Patriot Act authorities to protect against abuse. It restricts the types of records that can be obtained without a court order to those that are the least sensitive and private, and it ensures that the FBI can only use NSLs to obtain information about individuals with some nexus to a suspected terrorist or spy. It makes sure that the FBI can no longer obtain the sensitive records of individuals three or four times removed from a suspect, most of whom would be entirely innocent.

It prevents the use of so-called ''exigent letters,'' which the IG found the FBI was using in violation of the NSL statutes. It requires additional congressional reporting on NSLs, and it requires the FBI to establish a compliance program and tracking database for NSLs. It requires the Attorney General to issue minimization and destruction procedures for information obtained through NSLs, so that information obtained about Americans is subject to enhanced protections and the FBI does not retain information obtained in error.

On Section 215, the legislation establishes a standard of individualized suspicion for obtaining a FISA business records order, requiring that the government have reason to believe the records sought relate to a suspected terrorist or spy or someone directly linked to a suspected terrorist or spy, and it creates procedural protections to prevent abuses. The bill also ensures robust, meaningful and constitutionally sound judicial review of both National Security Letters and Section 215 business records orders, and the gag orders that accompany them.

This legislation is a measured, reasonable response to a serious problem. The NSL authorities operate in secret. The Justice Department's classified reports to Congress on the use of NSLs were admittedly inaccurate. And when, during the reauthorization process, Congress asked questions about how these authorities were being used, we got empty assurances and platitudes that we now know were mistaken.

Oversight alone is not enough. Congress also must take corrective action. The Inspector General report has shown both that the executive branch cannot be trusted to exercise those powers without oversight and that current statutory safeguards are inadequate. This National Security Letter Reform Act is the answer.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2088

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Security Letter Reform Act of 2007'' or the ''NSL Reform Act of 2007''.

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

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

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

''§ 2709. National Security Letter for communications subscriber records

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge of a Bureau field office, may issue in writing and cause to be served on a wire or electronic communications service provider a National Security Letter requiring the production of the following:

''(A) The name of the customer or subscriber.

''(B) The address of the customer or subscriber.

''(C) The length of the provision of service by such provider to the customer or subscriber (including start date) and the types of service utilized by the customer or subscriber.

''(D) The telephone number or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any temporarily assigned network address.

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

''(F) Information about any service or merchandise orders, including any shipping information and vendor locations.

''(G) The name and contact information, if available, of any other wire or electronic communications service providers facilitating the communications of the customer or subscriber.

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

''(b) REQUIREMENTS.—

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

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

''(B) there are specific and articulable facts providing reason to believe that the records—

''(i) pertain to a suspected agent of a foreign power; or

''(ii) pertain to an individual who has been in contact with, or otherwise directly linked to, a suspected agent of a foreign power who is the subject of an ongoing, authorized and specifically identified national security investigation (other than a threat assessment); or

''(iii) pertain to the activities of a suspected agent of a foreign power, where those activities are the subject of an ongoing, authorized and specifically identified national security investigation (other than a threat assessment), and obtaining the records is the least intrusive means that could be used to identify persons believed to be involved in such activities.

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

''(A) shall be conducted under guidelines approved by the Attorney General and Executive Order 12333 (or successor order); and

''(B) shall not be conducted with respect to a United States person upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) CONTENTS.—A National Security Letter issued under subsection (a) shall—

''(A) describe the records to be produced with sufficient particularity to permit them to be fairly identified;

''(B) include the date on which the records must be provided, which shall allow a reasonable period of time within which the records can be assembled and made available;

''(C) provide clear and conspicuous notice of the principles and procedures set forth in this section, including notification of any nondisclosure requirement under subsection (c) and a statement laying out the rights and responsibilities of the recipient; and

''(D) not contain any requirement that would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or require the production of any documentary evidence that would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation.

''(4) RETENTION OF RECORDS.—The Director of the Federal Bureau of Investigation shall direct that a signed copy of each National Security Letter issued under this section be retained in the database required to be established by section 6 of the National Security Letter Reform Act of 2007.

''(c) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) IN GENERAL.—

''(A) IN GENERAL.—If a certification is issued pursuant to subparagraph (B), no wire

or electronic communication service provider, or officer, employee, or agent thereof, who receives a National Security Letter under this section, shall disclose to any person the particular information specified in such certification for 30 days after receipt of such National Security Letter.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in charge of a Bureau field office, certifies that—

''(i) there is reason to believe that disclosure of particular information about the existence or contents of a National Security Letter issued under this section will result in—

''(I) endangering the life or physical safety of any person;

''(II) flight from prosecution;

''(III) destruction of or tampering with evidence;

''(IV) intimidation of potential witnesses;

''(V) interference with diplomatic relations; or

''(VI) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target; and

''(ii) the nondisclosure requirement is narrowly tailored to address the specific harm identified by the Government.

''(C) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the 30-day period specified in subparagraph (A), an appropriate official of the Federal Bureau of Investigation shall promptly notify the wire or electronic service provider, or officer, employee, or agent thereof, subject to the nondisclosure requirement that such nondisclosure requirement is no longer in effect.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A wire or electronic communication service provider, or officer, employee, or agent thereof, who receives a National Security Letter under this section may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with a National Security Letter under this section;

''(ii) an attorney in order to obtain legal advice or assistance regarding such National Security Letter; or

''(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made pursuant to subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a National Security Letter is directed under this section in the same manner as such person.

''(C) NOTICE.—Any recipient who discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform such person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, may apply for an order prohibiting disclosure of particular information about the existence or contents of a National Security Letter issued under this section for an additional 180 days.

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

''(5) APPLICATION CONTENTS.—An application for an order pursuant to this subsection shall include—

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

''(i) endangering the life or physical safety of any person;

''(ii) flight from prosecution;

''(iii) destruction of or tampering with evidence;

''(iv) intimidation of potential witnesses;

''(v) interference with diplomatic relations; or

''(vi) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target; and

''(B) an explanation of how the nondisclosure requirement is narrowly tailored to address the specific harm identified by the Government.

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

''(A) there is reason to believe that disclosure of particular information about the existence or contents of a National Security Letter issued under this section will result in—

''(i) endangering the life or physical safety of any person;

''(ii) flight from prosecution;

''(iii) destruction of or tampering with evidence;

''(iv) intimidation of potential witnesses;

''(v) interference with diplomatic relations; or

''(vi) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target; and

''(B) the nondisclosure requirement is narrowly tailored to address the specific harm identified by the Government.

''(7) RENEWAL.—An order under this subsection may be renewed for additional periods of up to 180 days upon another application meeting the requirements of paragraph (5) and a determination by the court that the circumstances described in paragraph (6) continue to exist.

''(8) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the expiration of the time period imposed by a court for that nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the court, and the court shall terminate such nondisclosure requirement.

''(d) MINIMIZATION AND DESTRUCTION.—

''(1) IN GENERAL.—Not later than 180 days after the enactment of this section, the Attorney General shall establish minimization and destruction procedures governing the retention and dissemination by the Federal Bureau of Investigation of any records received by the Federal Bureau of Investigation in response to a National Security Letter under this section.

''(2) DEFINITION.—In this section, the term 'minimization and destruction procedures' means—

''(A) specific procedures that are reasonably designed in light of the purpose and technique of a National Security Letter, to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information, including procedures to ensure that information obtained pursuant to a National Security Letter regarding persons no longer of interest in an authorized investigation, or information obtained pursuant to a National Security Letter that does not meet the requirements of this section or is outside the scope of such National Security Letter, is returned or destroyed;

''(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 101(e)(1) of the Foreign Intelligence Surveillance Act of 1978, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; and

''(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

''(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—

''(1) IN GENERAL.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the Senate and the Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, concerning all requests made under this section.

''(2) CONTENTS.—The report required by paragraph (1) shall include—

''(A) a description of the minimization and destruction procedures adopted by the Attorney General pursuant to subsection (d), including any changes to such minimization procedures previously adopted by the Attorney General;

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

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

''(D) a description of the extent to which information obtained with National Security Letters under this section has aided criminal prosecutions and an explanation of how such information has aided such prosecutions.

''(f) USE OF INFORMATION.—

''(1) IN GENERAL.—

''(A) CONSENT.—Any information acquired from a National Security Letter pursuant to this section concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization and destruction procedures required by this section.

''(B) LAWFUL PURPOSE.—No information acquired from a National Security Letter pursuant to this section may be used or disclosed by Federal officers or employees except for lawful purposes.

''(2) DISCLOSURE FOR LAW ENFORCEMENT PURPOSES.—No information acquired pursuant to this section shall be disclosed for law enforcement purposes unless such disclosure

is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

''(3) NOTIFICATION OF INTENDED DISCLOSURE BY THE UNITED STATES.—Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States against an aggrieved person any information obtained or derived from a National Security Letter pursuant to this section, the United States shall, before the trial, hearing, or other proceeding or at a reasonable time before an effort to so disclose or so use this information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

''(4) NOTIFICATION OF INTENDED DISCLOSURE BY STATE OR POLITICAL SUBDIVISION.—Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any information obtained or derived from a National Security Letter pursuant to this section, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

''(5) MOTION TO SUPPRESS.—

''(A) IN GENERAL.—Any aggrieved person against whom evidence obtained or derived from a National Security Letter pursuant to this section is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the National Security Letter, as the case may be, on the grounds that—

''(i) the information was acquired in violation of the Constitution or laws of the United States; or

''(ii) the National Security Letter was not issued in conformity with the requirements of this section.

''(B) TIMING.—A motion under subparagraph (A) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

''(6) JUDICIAL REVIEW.—

''(A) IN GENERAL.—Whenever—

''(i) a court or other authority is notified pursuant to paragraph (3) or (4);

''(ii) a motion is made pursuant to paragraph (5); or

''(iii) any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to—

''(I) discover or obtain materials relating to a National Security Letter issued pursuant to this section; or

''(II) discover, obtain, or suppress evidence or information obtained or derived from a National Security Letter issued pursuant to this section;

the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure would harm the national security of the United States, review in camera the materials as may be necessary to determine whether the request was lawful.

''(B) DISCLOSURE.—In making a determination under subparagraph (A), unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case, the court shall disclose to the aggrieved person, the counsel of the aggrieved person, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.) or other applicable law, portions of the application, order, or other related materials, or evidence or information obtained or derived from the order.

''(7) EFFECT OF DETERMINATION OF LAWFULNESS.—

''(A) UNLAWFUL ORDERS.—If the United States district court determines pursuant to paragraph (6) that the National Security Letter was not in compliance with the Constitution or laws of the United States, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the National Security Letter or otherwise grant the motion of the aggrieved person.

''(B) LAWFUL ORDERS.—If the court determines that the National Security Letter was lawful, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

''(8) BINDING FINAL ORDERS.—Orders granting motions or requests under paragraph (6), decisions under this section that a National Security Letter was not lawful, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other related materials shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals or the Supreme Court.

''(g) DEFINITIONS.—As used in this section—

''(1) the term 'agent of a foreign power' has the meaning given such term by section 101(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b));

''(2) the term 'aggrieved person' means a person whose information or records were sought or obtained under this section; and

''(3) the term 'foreign power' has the meaning given such term by section 101(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)).''.

SEC. 3. NATIONAL SECURITY LETTER AUTHORITY FOR CERTAIN FINANCIAL RECORDS.

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

''SEC. 1114. NATIONAL SECURITY LETTER FOR CERTAIN FINANCIAL RECORDS.

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge of a Bureau field office, may issue in writing and cause to be served on a financial institution, a National Security Letter requiring the production of—

''(A) the name of the customer or entity with whom the financial institution has a financial relationship;

''(B) the address of the customer or entity with whom the financial institution has a financial relationship;

''(C) the length of time during which the customer or entity has had an account or other financial relationship with the financial institution (including the start date) and the type of account or other financial relationship; and

''(D) any account number or other unique identifier associated with the financial relationship of the customer or entity to the financial institution.

''(2) LIMITATION.—A National Security Letter issued pursuant to this section may require the production only of records identified in subparagraphs (A) through (D) of paragraph (1).

''(b) NATIONAL SECURITY LETTER REQUIREMENTS.—

''(1) IN GENERAL.—A National Security Letter issued under this section shall be subject to the requirements of subsections (b) through (g) of section 2709 of title 18, United States Code, in the same manner and to the same extent as those provisions apply with respect to wire and electronic communication service providers.

''(2) REPORTING.—For purposes of this section, the reporting requirement in section 2709(e) of title 18, United States Code, shall also require informing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''(c) DEFINITION OF 'FINANCIAL INSTITUTION'.—For purposes of this section, section 1115, and section 1117, insofar as they relate to the operation of this section, the term 'financial institution' has the same meaning as in subsections (a)(2) and (c)(1) of section 5312 of title 31, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.''.

SEC. 4. NATIONAL SECURITY LETTER AUTHORITY FOR CERTAIN CONSUMER REPORT RECORDS.

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

(1) by striking the section heading and inserting the following:

''§ 626. National Security Letters for certain consumer report records'';

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

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or Special Agent in Charge of a Bureau field office, may issue in writing and cause to be served on a consumer reporting agency a National Security Letter requiring the production of—

''(A) the name of a consumer;

''(B) the current and former address of a consumer;

''(C) the current and former places of employment of a consumer; and

''(D) the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that such information is in the files of the consumer reporting agency.

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

''(b) NATIONAL SECURITY LETTER REQUIREMENTS.—

''(1) IN GENERAL.—A National Security Letter issued under this section shall be subject to the requirements of subsections (b) through (g) of section 2709 of title 18, United States Code, in the same manner and to the

same extent as those provisions apply with respect to wire and electronic communication service providers.

''(2) REPORTING.—For purposes of this section, the reporting requirement in section 2709(e) of title 18, United States Code, shall also require informing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.'';

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

(4) by redesignating subsections (e) and (i) through (m) as subsections (c) through (h), respectively.

SEC. 5. JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.

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

''(b) NONDISCLOSURE.—

''(1) IN GENERAL.—The recipient of a request for records or other information under section 2709 of this title, section 626 of the Fair Credit Reporting Act, section 1114 of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) to modify or set aside a nondisclosure requirement imposed in connection with such a request. Such petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the nondisclosure requirement to comply with the provisions of section 2709 of this title, section 626 of the Fair Credit Reporting Act, section 1114 of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, or upon any constitutional or other legal right or privilege of such person.

''(2) STANDARD.—The court shall modify or set aside the nondisclosure requirement unless the court determines that—

''(A) there is a reason to believe that disclosure of the information subject to the nondisclosure requirement will result in—

''(i) endangering the life or physical safety of any person;

''(ii) flight from prosecution;

''(iii) destruction of or tampering with evidence;

''(iv) intimidation of potential witnesses;

''(v) interference with diplomatic relations; or

''(vi) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target; and

''(B) the nondisclosure requirement is narrowly tailored to address the specific harm identified by the Government.''.

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

''(d) DISCLOSURE.—In making determinations under this section, unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case, the court shall disclose to the petitioner, the counsel of the petitioner, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.) or other applicable law, portions of the application, National Security Letter, or other related materials.''.

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

(1) in subsection (a), by—

(A) inserting after ''(a)'' the following ''REQUEST.—'';

(B) striking ''2709(b)'' and inserting ''2709'';

(C) striking ''626(a) or (b) or 627(a)'' and inserting ''626''; and

(D) striking ''1114(a)(5)(A)'' and inserting ''1114''; and

(2) in subsection (c), by—

(A) inserting after ''(c)'' the following ''FAILURE TO COMPLY.—'';

(B) by striking ''2709(b)'' and inserting ''2709'';

(C) by striking ''626(a) or (b) or 627(a)'' and inserting ''626''; and

(D) by striking ''1114(a)(5)(A)'' and inserting ''1114''. .

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

SEC. 6. NATIONAL SECURITY LETTER COMPLIANCE PROGRAM AND TRACKING DATABASE.

(a) COMPLIANCE PROGRAM.—The Director of the Federal Bureau of Investigation shall establish a program to ensure compliance with the amendments made by sections 2, 3, and 4 of this Act.

(b) TRACKING DATABASE.—The compliance program required by subsection (a) shall include the establishment of a database, the purpose of which shall be to track all National Security Letters issued by the Federal Bureau of Investigation under section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414), section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u), and section 2709 of title 18, United States Code.

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

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

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

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

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

(5) whether the National Security Letter seeks information regarding an individual who is the subject of such investigation;

(6) when the information requested was received and, if applicable, when it was destroyed; and

(7) whether the information gathered was disclosed for law enforcement purposes.

SEC. 7. PUBLIC REPORTING ON NATIONAL SECURITY LETTERS.

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

(1) in paragraph (1)—

(A) by striking ''concerning different United States persons''; and

(B) in subparagraph (A), by striking '', excluding the number of requests for subscriber information'';

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

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

''(A) United States persons;

''(B) non-United States persons;

''(C) persons who are the subjects of authorized national security investigations; and

''(D) persons who are not the subjects of authorized national security investigations.''.

SEC. 8. SUNSET OF EXPANDED NATIONAL SECURITY LETTER AUTHORITIES.

Subsection 102(b) of Public Law 109–177 is amended to read as follows:

''(b) SECTIONS 206, 215, 358(G), 505 SUNSET.—

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

''(A) sections 501, 502, and 105(c)(2) of the Foreign Intelligence Surveillance Act of 1978;

''(B) section 2709 of title 18, United States Code;

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

''(D) section 1114 of the Right to Financial Privacy Act (12 U.S.C. 3414).

''(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.''.

SEC. 9. PRIVACY PROTECTIONS FOR SECTION 215 BUSINESS RECORDS ORDERS.

(a) IN GENERAL.—Section 501(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(b)(2)) is amended—

(1) in paragraph (1)(B), by striking ''and'' after the semicolon;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking '', such things being presumptively'' through the end of the subparagraph and inserting a semicolon;

(B) by redesignating subparagraph (B) as subparagraph (C) and striking the period at the end and inserting ''; and''; and

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

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

''(i) pertain to a suspected agent of a foreign power; or

''(ii) pertain to an individual who has been in contact with, or otherwise directly linked to, a suspected agent of a foreign power if the circumstances of that contact or link suggest that the records sought will be relevant to an ongoing, authorized and specifically identified national security investigation (other than a threat assessment) of that suspected agent of a foreign power; and''; and

(3) by inserting at the end the following:

''(3) if the applicant is seeking a nondisclosure requirement described in subsection (d), shall include—

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

''(i) endangering the life or physical safety of any person;

''(ii) flight from prosecution;

''(iii) destruction of or tampering with evidence;

''(iv) intimidation of potential witnesses;

''(v) interference with diplomatic relations; or

''(vi) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target; and

''(B) an explanation of how the nondisclosure requirement is narrowly tailored to address the specific harm identified by the Government.''.

(b) ORDER.—Section 501(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)) is amended—

(1) in paragraph (1), by—

(A) striking ''subsections (a) and (b)'' and inserting ''subsection (a) and paragraphs (1) and (2) of subsection (b)''; and

(B) inserting at the end the following: ''If the judge finds that the requirements of subsection (b)(3) have been met, such order shall include a nondisclosure requirement subject

to the principles and procedures described in subsection (d)''; and

(2) in paragraph (2)(C), by inserting before the semicolon '', if applicable''.

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

''(d) NONDISCLOSURE.—

''(1) IN GENERAL.—No person who receives an order under subsection (c) that contains a nondisclosure requirement shall disclose to any person the particular information specified in such nondisclosure requirement for 180 days after receipt of such order.

''(2) EXCEPTION.—

''(A) DISCLOSURE.—A person who receives an order under subsection (c) that contains a nondisclosure requirement may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with an order under this section;

''(ii) an attorney in order to obtain legal advice or assistance regarding such order; or

''(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(B) APPLICATION.—A person to whom disclosure is made pursuant to subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

''(C) NOTIFICATION.—Any person who discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall notify such person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge), may apply for renewals for the prohibition on disclosure of particular information about the existence or contents of an order requiring the production of tangible things under this section for additional periods of up to 180 days each. Such nondisclosure requirement shall be renewed if a court having jurisdiction pursuant to paragraph (4) determines that the application meets the requirements of subsection (b)(3).

''(4) JURISDICTION.—An application for a renewal pursuant to this subsection shall be made to—

''(A) a judge of the court established under section 103(a); or

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

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

''(h) USE OF INFORMATION.—

''(1) IN GENERAL.—

''(A) CONSENT.—Any tangible things or information acquired from an order pursuant to this section concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this section.

''(B) USE AND DISCLOSURE.—No tangible things or information acquired from an order pursuant to this section may be used or disclosed by Federal officers or employees except for lawful purposes.

''(2) DISCLOSURE FOR LAW ENFORCEMENT PURPOSES.—No tangible things or information acquired pursuant to this section shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such tangible things or information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

''(3) NOTIFICATION OF INTENDED DISCLOSURE BY THE UNITED STATES.—Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States against an aggrieved person any tangible things or information obtained or derived from an order pursuant to this section, the United States shall, before the trial, hearing, or other proceeding or at a reasonable time before an effort to so disclose or so use the tangible things or information or submit them in evidence, notify the aggrieved person and the court or other authority in which the tangible things or information are to be disclosed or used that the United States intends to so disclose or so use such tangible things or information.

''(4) NOTIFICATION OF INTENDED DISCLOSURE BY STATE OR POLITICAL SUBDIVISION.—Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any tangible things or information obtained or derived from an order pursuant to this section, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the tangible things or information are to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such tangible things or information.

''(5) MOTION TO SUPPRESS.—

''(A) IN GENERAL.—Any aggrieved person against whom evidence obtained or derived from an order pursuant to this section is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the order, as the case may be, on the grounds that—

''(i) the tangible things or information were acquired in violation of the Constitution or laws of the United States; or

''(ii) the order was not issued in conformity with the requirements of this section.

''(B) TIMING.—A motion under subparagraph (A) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

''(6) JUDICIAL REVIEW.—

''(A) IN GENERAL.—Whenever—

''(i) a court or other authority is notified pursuant to paragraph (3) or (4);

''(ii) a motion is made pursuant to paragraph (5); or

''(iii) any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to—

''(I) discover or obtain applications, orders, or other materials relating to an order issued pursuant to this section; or

''(II) discover, obtain, or suppress evidence or information obtained or derived from an order issued pursuant to this section;

the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure would harm the national security of the United States, review in camera the application, order, and such other related materials as may be necessary to determine whether the order was lawfully authorized and served.

''(B) DISCLOSURE.—In making a determination under subparagraph (A), unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case, the court shall disclose to the aggrieved person, the counsel of the aggrieved person, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.) or other applicable law, portions of the application, order, or other related materials, or evidence or information obtained or derived from the order.

''(7) EFFECT OF DETERMINATION OF LAWFULNESS.—

''(A) UNLAWFUL ORDERS.—If the United States district court determines pursuant to paragraph (6) that the order was not authorized or served in compliance with the Constitution or laws of the United States, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the order or otherwise grant the motion of the aggrieved person.

''(B) LAWFUL ORDERS.—If the court determines that the order was lawfully authorized and served, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

''(8) BINDING FINAL ORDERS.—Orders granting motions or requests under paragraph (6), decisions under this section that an order was not lawfully authorized or served, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other related materials shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals or the Supreme Court.''.

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

''SEC. 503. DEFINITIONS.

''In this title, the following definitions apply:

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

''(2) AGGRIEVED PERSON.—The term 'aggrieved person' means any person whose tangible things or information were acquired pursuant to an order under this title.''.

SEC. 10. JUDICIAL REVIEW OF SECTION 215 ORDERS.

Section 501(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended to read as follows:

''(f) JUDICIAL REVIEW.—

''(1) ORDER FOR PRODUCTION.—Not later than 20 days after the service upon any person of an order pursuant to subsection (c), or at any time before the return date specified in the order, whichever period is shorter, such person may file, in the court established under section 103(a) or in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, a petition for

such court to modify or set aside such order. The time allowed for compliance with the order in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of such order to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

''(2) NONDISCLOSURE ORDER.—

''(A) IN GENERAL.—A person prohibited from disclosing information under subsection (d) may file, in the courts established by section 103(a) or in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, a petition for such court to set aside the nondisclosure requirement. Such petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the nondisclosure requirement to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

''(B) STANDARD.—The court shall modify or set aside the nondisclosure requirement unless the court determines that—

''(i) there is reason to believe that disclosure of the information subject to the nondisclosure requirement will result in—

''(I) endangering the life or physical safety of any person;

''(II) flight from prosecution;

''(III) destruction of or tampering with evidence;

''(IV) intimidation of potential witnesses;

''(V) interference with diplomatic relations; or

''(VI) otherwise seriously endangering the national security of the United States by alerting a target, a target's associates, or the foreign power of which the target is an agent, of the Government's interest in the target; and

''(ii) the nondisclosure requirement is narrowly tailored to address the specific harm identified by the Government.

''(3) RULEMAKING.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the National Security Letter Reform Act of 2007, the courts established pursuant to section 103(a) shall establish such rules and procedures and take such actions as are reasonably necessary to administer their responsibilities under this subsection.

''(B) REPORTING.—Not later than 30 days after promulgating rules and procedures under subparagraph (A), the courts established pursuant to section 103(a) shall transmit a copy of the rules and procedures, unclassified to the greatest extent possible (with a classified annex, if necessary), to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.

''(4) DISCLOSURES TO PETITIONERS.—In making determinations under this subsection, unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case, the court shall disclose to the petitioner, the counsel of the petitioner, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.) or other applicable law, portions of the application, order, or other related materials.''.

SEC. 11. RESOURCES FOR FISA APPLICATIONS.

(a) ELECTRONIC FILING.—

(1) IN GENERAL.—The Department of Justice shall establish a secure electronic system for the submission of documents and other information to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) relating to applications for orders under chapter 36 of title 50, authorizing electronic surveillance, physical searches, the use of pen register and trap and trace devices, and the production of tangible things.

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

(A) in subparagraph (C), by striking ''and'' after the semicolon;

(B) in subparagraph (D), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(E) $5,000,000 for the implementation of the secure electronic filing system established by Section 11(a)(1) of the National Security Letter Reform Act.''.

(b) PERSONNEL AND INFORMATION TECHNOLOGY NEEDS.—

(1) OFFICE OF INTELLIGENCE POLICY AND REVIEW.—

(A) IN GENERAL.—The Office of Intelligence Policy and Review of the Department of Justice may hire personnel and procure information technology, as needed, to ensure the timely and efficient processing of applications to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

(B) FUNDING SOURCE.—

(i) Section 1103(4) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 is amended—

(I) in subparagraph (D), by striking ''and'' after the semicolon;

(II) in subparagraph (E), by striking the period and inserting ''; and''; and

(III) by adding at the end the following:

''(F) not to exceed $3,000,000 for the personnel and information technology as specified in Section 11(b)(1)(A) of the National Security Letter Reform Act.''.

(ii) Section 1104(4) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 is amended—

(I) in subparagraph (C), by striking ''and'' after the semicolon;

(II) in subparagraph (D), by striking the period and inserting ''; and''; and

(III) by adding at the end the following:

''(E) not to exceed $3,000,000 for the personnel and information technology as specified in Section 11(b)(1)(A) of the National Security Letter Reform Act.''.

(2) FBI.—

(A) IN GENERAL.—The Federal Bureau of Investigation may hire personnel and procure information technology, as needed, to ensure the timely and efficient processing of applications to the Foreign Intelligence Surveillance Court.

(B) FUNDING SOURCE.—

(i) Section 1103(7) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 is amended by inserting before the period the following: '', and which shall include not to exceed $3,000,000 for the personnel and information technology as specified in Section 11(b)(2)(A) of the National Security Letter Reform Act''.

(ii) Section 1104(7) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 is amended by inserting before the period the following: '', and which shall include not to exceed $3,000,000 for the personnel and information technology as specified in Section 11(b)(2)(A) of the National Security Letter Reform Act''.

SEC. 12. ENHANCED PROTECTIONS FOR EMERGENCY DISCLOSURES.

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

(1) in subsection (b)(8), by—

(A) striking '', in good faith,'' and inserting ''reasonably'';

(B) inserting ''immediate'' after ''involving''; and

(C) adding before the period: '', subject to the limitations of subsection (d) of this section;'';

(2) in subsection (c)(4) by—

(A) striking ''. in good faith,'' and inserting ''reasonably'';

(B) inserting ''immediate'' after ''involving''; and

(C) adding before the period: '', subject to the limitations of subsection (d) of this section.'';

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

''(d) REQUIREMENT.—

''(1) REQUEST.—If a governmental entity requests that a provider divulge information pursuant to subsection (b)(8) or (c)(4), the request shall specify that the disclosure is on a voluntary basis and shall document the factual basis for believing that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure without delay of the information.

''(2) NOTICE TO COURT.—Within 5 days of obtaining access to records under subsection (b)(8) or (c)(4), the governmental entity shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the governmental entity setting forth the grounds for the emergency access.''; and

(4) in subsection (e), as redesignated in paragraphs (1) and (2), by striking ''subsection (b)(8)'' and inserting ''subsections (b)(8) and (c)(4)''.

(b) RIGHT TO FINANCIAL PRIVACY ACT.—

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

''SEC. 1121. EMERGENCY DISCLOSURES.

''(a) IN GENERAL.—

''(1) STANDARD.—A financial institution (as defined in section 1114(c)) may divulge a record described in section 1114(a) pertaining to a customer to a Government authority, if the financial institution reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency.

''(2) NOTICE IN REQUEST.—If a Government authority requests that a financial institution divulge information pursuant to this section, the request shall specify that the disclosure is on a voluntary basis, and shall document the factual basis for believing that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure without delay of the information.

''(b) CERTIFICATE.—In the instances specified in subsection (a), the Government shall submit to the financial institution the certificate required in section 1103(b), signed by a supervisory official of a rank designated by the head of the Government authority.

''(c) NOTICE TO COURT.—Within 5 days of obtaining access to financial records under this section, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 1109.

''(d) REPORTING OF EMERGENCY DISCLOSURES.—On an annual basis, the Attorney General of the United States shall submit to the Committee on the Judiciary and the

Committee on Financial Services of the House of Representatives and the Committee on the Judiciary and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

''(1) the number of individuals for whom the Department of Justice has received voluntary disclosures under this section; and

''(2) a summary of the bases for disclosure in those instances where—

''(A) voluntary disclosures under this section were made to the Department of Justice; and

''(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.''.

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

(A) in section 1102 (12 U.S.C. 3402), by striking ''or 1114'' and inserting ''1114, or 1121''; and

(B) in section 1109(c) (12 U.S.C. 3409(c)), by striking ''1114(b)'' and inserting ''1121''.

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

''SEC. 627. EMERGENCY DISCLOSURES.

''(a) IN GENERAL.—

''(1) STANDARD.—A consumer reporting agency may divulge identifying information respecting any consumer, limited to the name, address, former addresses, places of employment, or former places of employment of the consumer, to a Government agency, if the consumer reporting agency reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency.

''(2) NOTICE IN REQUEST.—If a Government agency requests that a consumer reporting agency divulge information pursuant to this section, the request shall specify that the disclosure is on a voluntary basis, and shall document the factual basis for believing that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure without delay of the information.

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

''(c) REPORTING OF EMERGENCY DISCLOSURES.—On an annual basis, the Attorney General of the United States shall submit to the Committee on the Judiciary and the Committee on Financial Services of the House of Representatives and the Committee on the Judiciary and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

''(1) the number of individuals for whom the Department of Justice has received voluntary disclosures under this section; and

''(2) a summary of the bases for disclosure in those instances where—

''(A) voluntary disclosures under this section were made to the Department of Justice; and

''(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.''.

SEC. 13. CLARIFICATION REGARDING DATA RETENTION.

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

''(3) A provider of wire or electronic communications services or a remote computing service who has received a request under this subsection shall not disclose the records referred to in paragraph (1) until such provider has received a court order or other process.''.

SEC. 14. LEAST INTRUSIVE MEANS.

(a) GUIDELINES.—

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

(2) SPECIFIC COLLECTION TECHNIQUES.—The guidelines required by this section shall provide guidance with regard to specific collection techniques, including the use of national security letters, considering such factors as—

(A) the effect on the privacy of individuals;

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

(C) any special First Amendment concerns relating to a potential recipient of a National Security Letter or other legal process, including a direction that prior to issuing such National Security Letter or other legal process to a library or bookseller, investigative procedures aimed at obtaining the relevant information from entities other than a library or bookseller be utilized and have failed, or reasonably appear to be unlikely to succeed if tried or endanger lives if tried.

(b) DEFINITIONS.—In this section:

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

(2) LIBRARY.—The term ''library'' means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2))) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.

By Mr. DURBIN (for himself, Mr. KENNEDY, Mr. FEINGOLD, and Mr. OBAMA):

S. 2092. A bill to amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today to support this Nations' workers, who deserve better treatment than they currently experience when their employers fail them.

We all remember what happened with Enron. Thousands of workers toiled over decades to slowly build up good, solid companies of which they could be proud. Then, in just a few short years, these companies were bought up by a conglomerate and run into the ground.

Enron went bankrupt and, just like that, the workers and retirees who spent their lives building something lost their jobs, their benefits, and most of their pensions. Our bankruptcy system helped facilitate that loss.

It is not just Enron. Workers and retirees are always near the back of the line when their companies go into bankruptcy. Some firms have gone into bankruptcy at least in part because companies can walk away forever from some of their obligations to their employees.

Today I am introducing the Protecting Employees and Retirees in Business Bankruptcies Act, along with Senators KENNEDY and FEINGOLD. I am pleased that Chairman CONYERS of the House Judiciary Committee will be introducing the House companion.

The Protecting Employees and Retirees in Business Bankruptcies Act will increase the value of worker claims in bankruptcy. The bill doubles the maximum value of wage claims for each worker to $20,000; allows a second claim of up to $20,000 for benefits earned; eliminates the requirement that employees earn wage and benefit claims within 180 days of the bankruptcy filing; creates a new priority claim for the loss in value of workers' pensions; and establishes a new priority administrative expense for workers' collective severance pay.

The bill also will reduce the loss of wages and benefits. It protects the value of collective bargaining agreements by limiting the situations in which they can be rejected and by tightening the criteria by which they can be amended. It also protects retiree benefits and ensures that bidders for assets of the bankrupt company that promise to honor back wages, vacation time, and other benefits are considered favorably.

Finally, the bill will increase the parity of worker and executive claims. For example, the bill prohibits deferred executive compensation in situations where employee compensation plans have been terminated in bankruptcy.

No longer will executives and insiders be able to pay themselves huge bonuses in the midst of slashing payroll and benefit costs.

No longer will consultants receive huge fees while retirees are losing most of their pensions.

No longer will companies be able to sell off all of the assets that make the company worthwhile, and yet refuse to use those proceeds to support the workers who have lost their livelihoods.

I am proud to introduce this legislation with Senators KENNEDY and FEINGOLD, and I thank the AFL–CIO and all of its workers for their wholehearted support.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2092

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Employees and Retirees in Business Bankruptcies Act of 2007''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Recent corporate restructurings have exacted a devastating toll on workers through deep cuts in wages and benefits, termination of defined benefit pension plans, and the transfer of productive assets to

lower wage economies outside the United States. Retirees have suffered deep cutbacks in benefits when companies in bankruptcy renege on their retiree health obligations and terminate pension plans.

(2) Congress enacted chapter 11 of title 11, United States Code, to protect jobs and enhance enterprise value for all stakeholders and not to be used as a strategic weapon to eliminate good paying jobs, strip employees and their families of a lifetime's worth of earned benefits and hinder their ability to participate in a prosperous and sustainable economy. Specific laws designed to treat workers and retirees fairly and keep companies operating are instead causing the burdens of bankruptcy to fall disproportionately and overwhelmingly on employees and retirees, those least able to absorb the losses.

(3) At the same time that working families and retirees are forced to make substantial economic sacrifices, executive pay enhancements continue to flourish in business bankruptcies, despite recent congressional enactments designed to curb lavish pay packages for those in charge of failing enterprises. Bankruptcy should not be a haven for the excesses of executive pay.

(4) Employees and retirees, unlike other creditors, have no way to diversify the risk of their employer's bankruptcy.

(5) Comprehensive reform is essential in order to remedy these fundamental inequities in the bankruptcy process and to recognize the unique firm-specific investment by employees and retirees in their employers' business through their labor.

SEC. 3. INCREASED WAGE PRIORITY.

Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (4)—

(A) by striking ''$10,000'' and inserting ''$20,000'';

(B) by striking ''within 180 days''; and

(C) by striking ''or the date of the cessation of the debtor's business, whichever occurs first,'';

(2) in paragraph (5)(A), by striking—

(A) ''within 180 days''; and

(B) ''or the date of the cessation of the debtor's business, whichever occurs first''; and

(3) in paragraph (5), by striking subparagraph (B) and inserting the following:

''(B) for each such plan, to the extent of the number of employees covered by each such plan, multiplied by $20,000.''.

SEC. 4. PRIORITY FOR STOCK VALUE LOSSES IN DEFINED CONTRIBUTION PLANS.

(a) Section 101(5) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by inserting ''or'' after the semicolon; and

(3) by adding at the end the following:

''(C) right or interest in equity securities of the debtor, or an affiliate of the debtor, held in a defined contribution plan (within the meaning of section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)) for the benefit of an individual who is not an insider or 1 of the 10 most highly compensated employees of the debtor (if 1 or more are not insiders), if such securities were attributable to—

''(i) employer contributions by the debtor or an affiliate of the debtor, other than elective deferrals (within the meaning of section 402(g) of the Internal Revenue Code of 1986), and any earnings thereon; or

''(ii) elective deferrals and any earnings thereon.''.

(b) Section 507(a) of title 11, United States Code, is amended—

(1) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively;

(2) by inserting after paragraph (5) the following:

''(6) Sixth, loss of the value of equity securities of the debtor or affiliate of the debtor that are held in a defined contribution plan (within the meaning of section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)), without regard to when services resulting in the contribution of stock to the plan were rendered, measured by the market value of the stock at the time of contribution to, or purchase by, the plan and the value as of the commencement of the case where an employer or plan sponsor that has commenced a case under this title has committed fraud with respect to such plan or has otherwise breached a duty to the participant that has proximately caused the loss of value.'';

(3) in paragraph (7), as redesignated, by striking ''Sixth'' and inserting ''Seventh'';

(4) in paragraph (8), as redesignated, by striking ''Seventh'' and inserting ''Eighth'';

(5) in paragraph (9), as redesignated, by striking ''Eighth'' and inserting ''Ninth'';

(6) in paragraph (10), as redesignated, by striking ''Ninth'' and inserting ''Tenth''; and

(7) in paragraph (11), as redesignated, by striking ''Tenth'' and inserting ''Eleventh''.

SEC. 5. PRIORITY FOR SEVERANCE PAY.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking ''and'' at the end;

(2) in paragraph (9) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(10) severance pay owed to employees of the debtor (other than to an insider, other senior management, or a consultant retained to provide services to the debtor), under a plan, program, or policy generally applicable to employees of the debtor, or owed pursuant to a collective bargaining agreement, but not under an individual contract of employment, for termination or layoff on or after the date of the filing of the petition, which pay shall be deemed earned in full upon such layoff or termination of employment.''.

SEC. 6. EXECUTIVE COMPENSATION UPON EXIT FROM BANKRUPTCY.

Section 1129(a)(5) of title 11, United States Code, is amended—

(1) in subparagraph (A)(ii), by striking ''and'' at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: ''; and

''(C) the compensation disclosed pursuant to subparagraph (B) has been approved by, or is subject to the approval of, the court, as reasonable when compared to persons holding comparable positions at comparable companies in the same industry and not disproportionate in light of economic concessions by the debtor's nonmanagement workforce during the case.''.

SEC. 7. LIMITATIONS ON EXECUTIVE COMPENSATION ENHANCEMENTS.

Section 503(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''or for the payment of performance or incentive compensation, or a bonus of any kind, or other financial returns designed to replace or enhance incentive, stock, or other compensation in effect prior to the date of the commencement of the case,'' after ''remain with the debtor's business,''; and

(2) by amending paragraph (3) to read as follows:

''(3) other transfers or obligations, to or for the benefit of officers, of managers, or of consultants retained to provide services to the debtor, before or after the date of filing of the petition, in the absence of a finding by the court based upon evidence in the record, and without deference to the debtor's request for such payments, that such transfers or obligations are essential to the survival of the debtor's business or (in the case of a liquidation of some or all of the debtor's assets) essential to the orderly liquidation and maximization of value of the assets of the debtor, in either case, because of the essential nature of the services provided, and then only to the extent that the court finds such transfers or obligations are reasonable compared to individuals holding comparable positions at comparable companies in the same industry and not disproportionate in light of economic concessions by the debtor's nonmanagement workforce during the case.''.

SEC. 8. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS.

Section 1113 of title 11, United States Code, is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) The debtor in possession, or the trustee if one has been appointed under this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may reject a collective bargaining agreement only in accordance with the provisions of this section.

''(b)(1) Where a debtor in possession or trustee (hereinafter in this section referred to collectively as a 'trustee') seeks rejection of a collective bargaining agreement, a motion seeking rejection shall not be filed unless the trustee has first met with the authorized representative (at reasonable times and for a reasonable period in light of the complexity of the case) to confer in good faith in attempting to reach mutually acceptable modifications of such agreement. Proposals by the trustee to modify the agreement shall be limited to modifications to the agreement that—

''(A) are designed to achieve a total aggregate financial contribution for the affected labor group for a period not to exceed 2 years after the effective date of the plan;

''(B) shall be no more than the minimal savings necessary to permit the debtor to exit bankruptcy, such that confirmation of such plan is not likely to be followed by the liquidation of the debtor or any successor to the debtor; and

''(C) shall not overly burden the affected labor group, either in the amount of the savings sought from such group or the nature of the modifications, when compared to other constituent groups expected to maintain ongoing relationships with the debtor, including management personnel.

''(2) Proposals by the trustee under paragraph (1) shall be based upon the most complete and reliable information available. Information that is relevant for the negotiations shall be provided to the authorized representative.

''(c)(1) If, after a period of negotiations, the debtor and the authorized representative have not reached agreement over mutually satisfactory modifications and the parties are at an impasse, the debtor may file a motion seeking rejection of the collective bargaining agreement after notice and a hearing held pursuant to subsection (d). The court may grant a motion to reject a collective bargaining agreement only if the court finds that—

''(A) the debtor has, prior to such hearing, complied with the requirements of subsection (b) and has conferred in good faith with the authorized representative regarding such proposed modifications, and the parties were at an impasse;

''(B) the court has considered alternative proposals by the authorized representative and has determined that such proposals do not meet the requirements of subparagraphs (A) and (B) of subsection (b)(1);

''(C) further negotiations are not likely to produce a mutually satisfactory agreement; and

''(D) the court has considered—

''(i) the effect of the proposed financial relief on the affected labor group;

''(ii) the ability of the debtor to retain an experienced and qualified workforce; and

''(iii) the effect of a strike in the event of rejection of the collective bargaining agreement.

''(2) In reaching a decision under this subsection regarding whether modifications proposed by the debtor and the total aggregate savings meet the requirements of subsection (b), the court shall take into account—

''(A) the ongoing impact on the debtor of the debtor's relationship with all subsidiaries and affiliates, regardless of whether any such subsidiary or affiliate is domestic or nondomestic, or whether any such subsidiary or affiliate is a debtor entity; and

''(B) whether the authorized representative agreed to provide financial relief to the debtor within the 24-month period prior to the date of the commencement of the case, and if so, shall consider the total value of such relief in evaluating the debtor's proposed modifications.

''(3) In reaching a decision under this subsection, where a debtor has implemented a program of incentive pay, bonuses, or other financial returns for insiders or senior management personnel during the bankruptcy, or has implemented such a program within 180 days before the date of the commencement of the case, the court shall presume that the debtor has failed to satisfy the requirements of subsection (b)(1)(C).'';

(2) in subsection (d)—

(A) by striking ''(d)'' and all that follows through paragraph (2) and inserting the following:

''(d)(1) Upon the filing of a motion for rejection of a collective bargaining agreement, the court shall schedule a hearing to be held on not less than 21 days notice (unless the debtor and the authorized representative agree to a shorter time). Only the debtor and the authorized representative may appear and be heard at such hearing.''; and

(B) by redesignating paragraph (3) as paragraph (2);

(3) in subsection (f), by adding at the end the following: ''Any payment required to be made under this section before the date on which a plan confirmed under section 1129 is effective has the status of an allowed administrative expense, as provided in section 503.''; and

(4) by adding at the end the following:

''(g) The rejection of a collective bargaining agreement constitutes a breach of such contract with the same effect as rejection of an executory contract pursuant to section 365(g). No claim for rejection damages shall be limited by section 502(b)(7). Economic self-help by an authorized representative shall be permitted upon a court order granting a motion to reject a collective bargaining agreement under subsection (c) or court-authorized interim changes under subsection (e), and no provision of this title or of any other Federal or State law shall be construed to the contrary.

''(h) At any time after the date on which an order is entered authorizing rejection, or where an agreement providing mutually satisfactory modifications has been entered into between the debtor and the authorized representative, at any time after such agreement has been entered into, the authorized representative may apply to the court for an order seeking an increase in the level of wages or benefits, or relief from working conditions, based upon changed circumstances. The court shall grant the request so long as the increase or other relief is consistent with the standard set forth in subsection (b)(1)(B).

''(i) Upon request by the authorized representative, and where the court finds that the prospects for reaching a mutually satisfactory agreement would be aided by granting the request, the court may direct that a dispute under subsection (c) be heard and determined by a neutral panel of experienced labor arbitrators in lieu of a court proceeding under subsection (d). The decision of such panel shall have the same effect as a decision by the court. The court's decision directing the appointment of a neutral panel is not subject to appeal.

''(j) Upon request by the authorized representative, the debtor shall provide for the reasonable fees and costs incurred by the authorized representative under this section, after notice and a hearing.

''(k) If a plan to be confirmed under section 1129 provides for the liquidation of the debtor, whether by sale or cessation of all or part of the business, the trustee and the authorized representative shall confer regarding the effects of such liquidation on the affected labor group, in accordance with applicable nonbankruptcy law, and shall provide for the payment of all accrued obligations not assumed as part of a sale transaction, and for such other terms as may be agreed upon, in order to ensure an orderly transfer of assets or cessation of the business. Any such payments shall have the status of allowed administrative expenses under section 503.

''(l) A collective bargaining agreement that is assumed shall be assumed in accordance with section 365.''.

SEC. 9. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting '', whether or not the debtor asserts a right to unilaterally modify such payments under such plan, fund, or program'' before the period at the end;

(2) in subsection (c)(1), by adding at the end the following: ''Where a labor organization elects to serve as the authorized representative, the debtor shall provide for the reasonable fees and costs incurred by the authorized representative under this section after notice and a hearing.'';

(3) in subsection (f), by striking ''(f)'' and all that follows through paragraph (2) and inserting the following:

''(f)(1) Where a trustee seeks modification of retiree benefits, a motion seeking modification of such benefits shall not be filed, unless the trustee has first met with the authorized representative (at reasonable times and for a reasonable period in light of the complexity of the case) to confer in good faith in attempting to reach mutually satisfactory modifications. Proposals by the trustee to modify retiree benefits shall be limited to modifications in retiree benefits that—

''(A) are designed to achieve a total aggregate financial contribution for the affected retiree group for a period not to exceed 2 years after the effective date of the plan;

''(B) shall be no more than the minimal savings necessary to permit the debtor to exit bankruptcy, such that confirmation of such plan is not likely to be followed by the liquidation of the debtor or any successor to the debtor; and

''(C) shall not overly burden the affected retirees, either in the amount of the savings sought or the nature of the modifications, when compared to other constituent groups expected to maintain ongoing relationships with the debtor, including management personnel.

''(2) Proposals by the trustee under paragraph (1) shall be based upon the most complete and reliable information available. Information that is relevant for the negotiations shall be provided to the authorized representative.'';

(4) in subsection (g), by striking ''(g)'' and all that follows through the semicolon at the end of paragraph (3) and inserting the following:

''(g) If, after a period of negotiations, the debtor and the authorized representative have not reached agreement over mutually satisfactory modifications and the parties are at an impasse, the debtor may apply to the court for modifications in the payment of retiree benefits after notice and a hearing held pursuant to subsection (k). The court may grant a motion to modify the payment of retiree benefits only if the court finds that—

''(1) the debtor has, prior to the hearing, complied with the requirements of subsection (f) and has conferred in good faith with the authorized representative regarding such proposed modifications and the parties were at an impasse;

''(2) the court has considered alternative proposals by the authorized representative and has determined that such proposals do not meet the requirements of subparagraphs (A) and (B) of subsection (f)(1);

''(3) further negotiations are not likely to produce a mutually satisfactory agreement; and

''(4) the court has considered—

''(A) the effect of the proposed modifications on the affected retirees; and

''(B) where the authorized representative is a labor organization, the effect of a strike in the event of modification of retiree health benefits;'';

(5) in subsection (k)—

(A) in paragraph (1)—

(i) in the first sentence, by striking ''fourteen'' and inserting ''21''; and

(ii) by striking the second and third sentences, and inserting the following: ''Only the debtor and the authorized representative may appear and be heard at such hearing.'';

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2); and

(6) by redesignating subsections (l) and (m) as subsections (n) and (o), respectively, and inserting the following:

''(l) In determining whether the proposed modifications comply with subsection (f)(1)(A), the court shall take into account the ongoing impact on the debtor of the debtor's relationship with all subsidiaries and affiliates, regardless of whether any such subsidiary or affiliate is domestic or nondomestic, or whether any such subsidiary or affiliate is a debtor entity.

''(m) No plan, fund, program, or contract to provide retiree benefits for insiders or senior management shall be assumed by the debtor if the debtor has obtained relief under subsection (g) or (h) for reductions in retiree benefits or under subsection (c) or (e) of section 1113 for reductions in the health benefits of active employees of the debtor on or after the commencement of the case or reduced or eliminated active or retiree benefits within 180 days prior to the date of the commencement of the case.''.

SEC. 10. PROTECTION OF EMPLOYEE BENEFITS IN A SALE OF ASSETS.

Section 363 of title 11, United States Code, is amended—

(1) in subsection (b), by adding at the end the following:

''(3) In approving a sale under this subsection, the court shall consider the extent to which a bidder has offered to maintain existing jobs, has preserved retiree health benefits, and has assumed the obligations of any defined benefit plan, in determining whether an offer constitutes the highest or best offer for such property.''; and

(2) by adding at the end the following:

''(q) If, as a result of a sale approved under this section, retiree benefits, as defined under section 1114(a), are modified or eliminated pursuant to the provisions of subsection (e)(1) or (h) of section 1114 or otherwise, then, except as otherwise provided in an agreement with the authorized representative of such retirees, a charge of $20,000 per retiree shall be made against the proceeds of such sale (or paid by the buyer as part of the sale) for the purpose of—

''(1) funding 12 months of health coverage following the termination or modification of such coverage through a plan, fund, or program made available by the buyer, by the debtor, or by a third party; or

''(2) providing the means by which affected retirees may obtain replacement coverage on their own,

except that the selection of either paragraph (1) or (2) shall be upon the consent of the authorized representative, within the meaning of section 1114(b), if any. Any claim for modification or elimination of retiree benefits pursuant to section 1114(i) shall be offset by the amounts paid under this subsection.''.

SEC. 11. UNION PROOF OF CLAIM.

Section 501(a) of title 11, United States Code, is amended by inserting '', including a labor organization,'' after ''A creditor''.

SEC. 12. CLAIM FOR LOSS OF PENSION BENEFITS.

Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(l) The court shall allow a claim asserted by an active or retired participant in a defined benefit plan terminated under section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, for any shortfall in pension benefits accrued as of the effective date of the termination of such pension plan as a result of the termination of the plan and limitations upon the payment of benefits imposed pursuant to section 4022 of such Act, notwithstanding any claim asserted and collected by the Pension Benefit Guaranty Corporation with respect to such termination.''.

SEC. 13. PAYMENTS BY SECURED LENDER.

Section 506(c) of title 11, United States Code, is amended by adding at the end the following: ''Where employees have not received wages, accrued vacation, severance, or other benefits owed pursuant to the terms of a collective bargaining agreement for services rendered on and after the date of the commencement of the case, such unpaid obligations shall be deemed necessary costs and expenses of preserving, or disposing of, property securing an allowed secured claim and shall be recovered even if the trustee has otherwise waived the provisions of this subsection under an agreement with the holder of the allowed secured claim or successor or predecessor in interest.''.

SEC. 14. PRESERVATION OF JOBS AND BENEFITS.

Title 11, United States Code, is amended—

(1) by inserting before section 1101 the following:

''SEC. 1100. STATEMENT OF PURPOSE.

''A debtor commencing a case under this chapter shall have as its purpose the reorganization of its business and, to the greatest extent possible, maintaining or enhancing the productive use of its assets, so as to preserve jobs.'';

(2) in section 1129(a), by adding at the end the following:

''(17) The debtor has demonstrated that every reasonable effort has been made to maintain existing jobs and mitigate losses to employees and retirees.'';

(3) in section 1129(c), by striking the last sentence and inserting the following: ''If the requirements of subsections (a) and (b) are met with respect to more than 1 plan, the court shall, in determining which plan to confirm, consider—

''(1) the extent to which each plan would maintain existing jobs, has preserved retiree health benefits, and has maintained any existing defined benefit plans; and

''(2) the preferences of creditors and equity security holders, and shall confirm the plan that better serves the interests of employees and retirees.''; and

(4) in the table of sections in chapter 11, by inserting the following before the item relating to section 1101:

''1100. Statement of purpose.''.

SEC. 15. ASSUMPTION OF EXECUTIVE RETIREMENT PLANS.

Section 365 of title 11, United States Code, is amended—

(1) in subsection (a), by striking ''and (d)'' and inserting ''(d), and (q)''; and

(2) by adding at the end the following:

''(q) No deferred compensation arrangement for the benefit of insiders or senior management of the debtor shall be assumed if a defined benefit plan for employees of the debtor has been terminated pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, on or after the date of the commencement of the case or within 180 days prior to the date of the commencement of the case.''.

SEC. 16. RECOVERY OF EXECUTIVE COMPENSATION.

Title 11, United States Code, is amended by inserting after section 562 the following:

''§ 563. Recovery of executive compensation

''(a) If a debtor has obtained relief under subsection (c) or (e) of section 1113, or subsection (g) or (h) of section 1114, by which the debtor reduces its contractual obligations under a collective bargaining agreement or retiree benefits plan, the court, as part of the entry of such order granting relief, shall determine the percentage diminution, as a result of the relief granted under section 1113 or 1114, in the value of the obligations when compared to the debtor's obligations under the collective bargaining agreement or with respect to retiree benefits, as of the date of the commencement of the case under this title. In making its determination, the court shall include reductions in benefits, if any, as a result of the termination pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, of a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, effective at any time on or after 180 days before the date of the commencement of a case under this title. The court shall not take into account pension benefits paid or payable under the provisions of title IV of such Act as a result of any such termination.

''(b) Where a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, has been terminated pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974, effective at any time on or after 180 days before the date of the commencement of a case under this title, but a debtor has not obtained relief under subsection (c) or (e) of section 1113, or subsection (g) or (h) of section 1114 of this title, the court, upon motion of a party in interest, shall determine the percentage diminution in the value of benefit obligations when compared to the total benefit liabilities prior to such termination. The court shall not take into account pension benefits paid or payable under the provisions of title IV of the Employee Retirement Income Security Act of 1974 as a result of any such termination.

''(c) Upon the determination of the percentage diminution in value under subsection (a) or (b), the estate shall have a claim for the return of the same percentage of the compensation paid, directly or indirectly (including any transfer to a self-settled trust or similar device, or to a nonqualified deferred compensation plan under section 409A(d)(1) of the Internal Revenue Code of 1986) to any officer of the debtor serving as member of the board of directors of the debtor within the year before the date of the commencement of the case, and any individual serving as chairman and any individual serving as lead director of the board of directors at the time of the granting of relief under section 1113 or 1114 of this title or, if no such relief has been granted, the termination of the defined benefit plan.

''(d) The trustee or a committee appointed pursuant to section 1102 may commence an action to recover such claims, except that if neither the trustee nor such committee commences an action to recover such claim by the first date set for the hearing on the confirmation of plan under section 1129, any party in interest may apply to the court for authority to recover such claim for the benefit of the estate. The costs of recovery shall be borne by the estate.

''(e) The court shall not award postpetition compensation under section 503(c) or otherwise to any person subject to the provisions of subsection (c) if there is a reasonable likelihood that such compensation is intended to reimburse or replace compensation recovered by the estate under this section.''.

SEC. 17. EXCEPTION FROM AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (27), by striking ''and'' at the end;

(2) in paragraph (28), by striking the period at the end and inserting ''; and'' and

(3) by adding at the end the following:

''(29) of the commencement or continuation of a grievance, arbitration, or similar dispute resolution proceeding established by a collective bargaining agreement that was or could have been commenced against the debtor before the filing of a case under this title, or the payment or enforcement of an award or settlement under such proceeding.''.

SEC. 18. PREFERENTIAL COMPENSATION TRANSFER.

Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(j) The trustee may avoid a transfer to or for the benefit of an insider (including an obligation incurred for the benefit of an insider under an employment contract) made in anticipation of bankruptcy, or a transfer made in anticipation of bankruptcy to a consultant who is formerly an insider and who is retained to provide services to an entity that becomes a debtor (including an obligation under a contract to provide services to such entity or to a debtor) made or incurred on or within 1 year before the filing of the petition. No provision of subsection (c) shall constitute a defense against the recovery of such transfer. The trustee or a committee appointed pursuant to section 1102 may commence an action to recover such transfer, except that, if neither the trustee nor such committee commences an action to recover such transfer by the time of the commencement of a hearing on the confirmation of a plan under section 1129, any party in interest may apply to the court for authority to recover the claims for the benefit of the estate. The costs of recovery shall be borne by the estate.''.

SEC. 19. FINANCIAL RETURNS FOR EMPLOYEES AND RETIREES.

Section 1129(a) of title 11, United States Code, is amended—

(1) by adding at the end the following:

''(18) In a case in which the debtor initiated proceedings under section 1113, the plan provides for recovery of rejection damages (where the debtor obtained relief under subsection (c) or (e) of section 1113 prior to confirmation of the plan) or for other financial returns, as negotiated by the debtor and the authorized representative (to the extent that such returns are paid under, rather than outside of, a plan).''; and

(2) by striking paragraph (13) and inserting the following:

''(13) With respect to retiree benefits, as that term is defined in section 1114, the plan—

''(A) provides for the continuation after its effective date of payment of all retiree benefits at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 at any time prior to the date of confirmation of the plan, for the duration of the period for which the debtor has obligated itself to provide such benefits, or, if no modifications are made prior to confirmation of the plan, the continuation of all such retiree benefits maintained or established in whole or in part by the debtor prior to the date of the filing of the petition; and

''(B) provides for allowed claims for modification of retiree benefits or for other financial returns, as negotiated by the debtor and the authorized representative, to the extent that such returns are paid under, rather than outside of, a plan).''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 330—EXPRESSING THE SENSE OF THE SENATE REGARDING THE DEGRADATION OF THE JORDAN RIVER AND THE DEAD SEA AND WELCOMING COOPERATION BETWEEN THE PEOPLES OF ISRAEL, JORDAN, AND PALESTINE

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 330

Whereas the Dead Sea and the Jordan River are bodies of water of exceptional historic, religious, cultural, economic, and environmental importance for the Middle East and the world;

Whereas the world's 3 great monotheistic faiths—Christianity, Islam, and Judaism—consider the Jordan River a holy place;

Whereas local governments have diverted more than 90 percent of the Jordan's traditional 1,300,000,000 cubic meters of annual water flow in order to satisfy a growing demand for water in the arid region;

Whereas the Jordan River is the primary tributary of the Dead Sea and the dramatically reduced flow of the Jordan River has been the primary cause of a 20 meter fall in the Dead Sea's water level and a ⅓ decline in the Dead Sea's surface area in less than 50 years;

Whereas the Dead Sea's water level continues to fall about a meter a year;

Whereas the decline in water level of the Dead Sea has resulted in significant environmental damage, including loss of freshwater springs, river bed erosion, and over 1,000 sinkholes;

Whereas mismanagement has resulted in the dumping of sewage, fish pond runoff, and salt water into the Jordan River and has led to the pollution of the Jordan River with agricultural and industrial effluents;

Whereas the World Monuments Fund has listed the Jordan River as one of the world's 100 most endangered sites;

Whereas widespread consensus exists regarding the need to restore the quantity and quality of the Jordan River water flow and to restore the water level of the Dead Sea;

Whereas the Governments of Jordan and Israel, as well as the Palestinian Authority (the ''Beneficiary Parties''), working together in an unusual and welcome spirit of cooperation, have attempted to address the Dead Sea water level crisis by articulating a shared vision of the Red Sea-Dead Sea Water Conveyance Concept;

Whereas Binyamin Ben Eliezar, the Minister of National Infrastructure of Israel, has said, ''The Study is an excellent example for cooperation, peace, and conflict reduction. Hopefully it will become the first of many such cooperative endeavors'';

Whereas Mohammed Mustafa, the Economic Advisor for the Palestinian Authority, has said, ''This cooperation will bring wellbeing for the peoples of the region, particularly Palestine, Jordan, and Israel . . . We pray that this type of cooperation will be a positive experience to deepen the notion of dialogue to reach solutions on all other tracks'';

Whereas Zafer al-Alem, the former Water Minister of Jordan, has said, ''This project is a unique chance to deepen the meaning of peace in the region and work for the benefit of our peoples'';

Whereas the Red Sea-Dead Sea Water Conveyance Concept envisions a 110-mile pipeline from the Red Sea to the Dead Sea that would descend approximately 1,300 feet creating an opportunity for hydroelectric power generation and the desalination and restoration of the Dead Sea;

Whereas some have raised legitimate questions regarding the feasibility and environmental impact of the Red Sea–Dead Sea Water Conveyance Concept;

Whereas the Beneficiary Parties have asked the World Bank to oversee a feasibility study and an environmental and social assessment whose purpose is to conclusively answer these questions;

Whereas the Red Sea–Dead Sea Water Conveyance Concept would not address the degradation of the Jordan River;

Whereas the Beneficiary Parties could address the degradation of the Jordan River by designing a comprehensive strategy that includes tangible steps related to water conservation, desalination, and the management of sewage and agricultural and industrial effluents; and

Whereas Israel and the Palestinian Authority are expected to hold high-level meetings in Washington in November 2007 to seek an enduring solution to the Arab–Israeli crisis: Now, therefore, be it

Resolved, That the Senate—

(1) calls the world's attention to the serious and potentially irreversible degradation of the Jordan River and the Dead Sea;

(2) applauds the cooperative manner with which the Governments of Israel and Jordan, as well as the Palestinian Authority (the ''Beneficiary Parties''), have worked to address the declining water level and quality of the Dead Sea and other water-related challenges in the region;

(3) supports the Beneficiary Parties' efforts to assess the environmental, social, health, and economic impacts, costs, and feasibility of a possible pipeline from the Red Sea to the Dead Sea in comparison to alternative proposals;

(4) encourages the Governments of Israel and Jordan, as well as the Palestinian Authority, to continue to work in a spirit of cooperation as they address the region's serious water challenges;

(5) urges Israel, Jordan, and the Palestinian Authority to develop a comprehensive strategy to rectify the degradation of the Jordan River; and

(6) hopes the spirit of cooperation manifested by the Beneficiary Parties in their search for a solution to the Dead Sea water crisis might serve as a model for addressing the degradation of the Jordan River, as well as a model of peace and cooperation for the upcoming meetings in Washington between Israel and the Palestinian Authority as they seek to resolve long-standing disagreements and to develop a durable solution to the Arab–Israeli crisis.

Mr. LUGAR. Mr. President, I rise to introduce a resolution expressing the sense of the Senate regarding the degradation of the Jordan River and the Dead Sea and welcoming cooperation between the peoples of Israel, Jordan and Palestine.

The Jordan River and the Dead Sea are bodies of water of exceptional historic, religious, cultural, economic and environmental importance for the Middle East and the world. However, both the Jordan River and the Dead Sea face serious problems. The governments of Israel and Jordan, as well as the Palestinian Authority, have worked together in an unusual and welcome spirit of cooperation to address many of the water challenges confronting the region. The Senate applauds this cooperation and urges Israel, Jordan and the Palestinian Authority to continue to work in a spirit of cooperation as it addresses the degradation of the Jordan River and the Dead Sea, and hopes this cooperation might serve as a model for Israel and the Palestinian Authority as they prepare to meet in Washington this fall to seek a durable solution to the Arab-Israeli crisis.

SENATE RESOLUTION 331—EXPRESSING THE SENSE OF THE SENATE THAT TURKEY SHOULD END ITS MILITARY OCCUPATION OF THE REPUBLIC OF CYPRUS, PARTICULARLY BECAUSE TURKEY'S PRETEXT HAS BEEN REFUTED BY OVER 13,000,000 CROSSINGS OF THE DIVIDE BY TURKISH-CYPRIOTS AND GREEK CYPRIOTS INTO EACH OTHER'S COMMUNITIES WITHOUT INCIDENT

Mr. MENENDEZ (for himself and Ms. SNOWE) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 331

Whereas it is in the best interests of the United States, Turkey, Cyprus, the European Union, and NATO for Turkey to adhere to United Nations resolutions and United States and European Union policy and end its military occupation of the Republic of Cyprus;

Whereas 13,000,000 crossings of the divide by Turkish-Cypriots and Greek-Cypriots into each other's communities without incident qualifies Cyprus' ethnic community relations to be among the world's safest, regardless of circumstances;

Whereas, unlike age-old ethnic frictions in the region, Cyprus has historically been an oasis of generally peaceful relations among ethnic communities, as is reflected in many