108TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 108–724 Part 5

9/11 RECOMMENDATIONS IMPLEMENTATION ACT

OCTOBER 5, 2004.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 10]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "9/11 Recommendations Implementation Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

Sec. 1001. Short title.

Subtitle A—Establishment of National Intelligence Director

Sec. 1011. Reorganization and improvement of management of intelligence community.
Sec. 1012. Revised definition of national intelligence.
Sec. 1013. Joint procedures for operational coordination between Department of Defense and Central Intelligence Agency.
Sec. 1014. Role of National Intelligence Director in appointment of certain officials responsible for intelligence-related activities.
Sec. 1015. Initial appointment of the National Intelligence Director.
Sec. 1016. Executive schedule matters.

Subtitle B—National Counterterrorism Center and Civil Liberties Protections

Sec. 1021. National Counterterrorism Center.
Sec. 1022. Civil Liberties Protection Officer.

96–242

Subtitle C—Joint Intelligence Community Council

Sec. 1031. Joint Intelligence Community Council.

Subtitle D—Improvement of Human Intelligence (HUMINT)

Sec. 1041. Human intelligence as an increasingly critical component of the intelligence community.
Sec. 1042. Improvement of human intelligence capacity.

Subtitle E—Improvement of Education for the Intelligence Community

Sec. 1051. Modification of obligated service requirements under National Security Education Program.
Sec. 1052. Improvements to the National Flagship Language Initiative.
Sec. 1053. Establishment of scholarship program for English language studies for heritage community citizens of the United States within the National Security Education Program.
Sec. 1054. Sense of Congress with respect to language and education for the intelligence community; reports.
Sec. 1055. Advancement of foreign languages critical to the intelligence community.
Sec. 1056. Pilot project for Civilian Linguist Reserve Corps.
Sec. 1057. Codification of establishment of the National Virtual Translation Center.
Sec. 1058. Report on recruitment and retention of qualified instructors of the Defense Language Institute.

Subtitle F—Additional Improvements of Intelligence Activities

Sec. 1061. Permanent extension of Central Intelligence Agency Voluntary Separation Incentive Program.
Sec. 1062. National Security Agency Emerging Technologies Panel.

Subtitle G—Conforming and Other Amendments

Sec. 1071. Conforming amendments relating to roles of National Intelligence Director and Director of the Central Intelligence Agency.
Sec. 1072. Other conforming amendments
Sec. 1073. Elements of intelligence community under National Security Act of 1947.
Sec. 1074. Redesignation of National Foreign Intelligence Program as National Intelligence Program.
Sec. 1075. Repeal of superseded authorities.
Sec. 1076. Clerical amendments to National Security Act of 1947.
Sec. 1077. Conforming amendments relating to prohibiting dual service of the Director of the Central Intelligence Agency.
Sec. 1078. Access to Inspector General protections.
Sec. 1079. General references.
Sec. 1080. Application of other laws.

Subtitle H—Transfer, Termination, Transition and Other Provisions

Sec. 1091. Transfer of community management staff.
Sec. 1092. Transfer of terrorist threat integration center.
Sec. 1093. Termination of positions of Assistant Directors of Central Intelligence.
Sec. 1094. Implementation plan.
Sec. 1095. Transitional authorities.
Sec. 1096. Effective dates.

TITLE II—TERRORISM PREVENTION AND PROSECUTION

Subtitle A—Individual Terrorists as Agents of Foreign Powers

Sec. 2001. Presumption that certain non-United States persons engaging in international terrorism are agents of foreign powers for purposes of the Foreign Intelligence Surveillance Act of 1978.

Subtitle B—Stop Terrorist and Military Hoaxes Act of 2004

Sec. 2021. Short title.
Sec. 2022. Hoaxes and recovery costs.
Sec. 2023. Obstruction of justice and false statements in terrorism cases.
Sec. 2024. Clarification of definition.

Subtitle C—Material Support to Terrorism Prohibition Enhancement Act of 2004

Sec. 2041. Short title.
Sec. 2042. Receiving military-type training from a foreign terrorist organization.
Sec. 2043. Providing material support to terrorism.
Sec. 2044. Financing of terrorism.

Subtitle D—Weapons of Mass Destruction Prohibition Improvement Act of 2004

Sec. 2051. Short title.
Sec. 2052. Weapons of mass destruction.
Sec. 2053. Participation in nuclear and weapons of mass destruction threats to the United States.
Sec. 2054. Proliferation of weapons of mass destruction.
Sec. 2055. Sense of Congress regarding international counterproliferation efforts.
Sec. 2056. Removal of potential nuclear weapons materials from vulnerable sites worldwide.

Subtitle E—Money Laundering and Terrorist Financing

CHAPTER 1—FUNDING TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

Sec. 2101. Additional authorization for FinCEN.
Sec. 2102. Money laundering and financial crimes strategy reauthorization.

CHAPTER 2—ENFORCEMENT TOOLS TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

SUBCHAPTER A—MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM TECHNICAL CORRECTIONS

Sec. 2111. Short title.
Sec. 2112. Technical corrections to Public Law 107–56.
Sec. 2113. Technical corrections to other provisions of law.
Sec. 2114. Repeal of review.
Sec. 2115. Effective date.

SUBCHAPTER B—ADDITIONAL ENFORCEMENT TOOLS

Sec. 2121. Bureau of Engraving and Printing security printing.
Sec. 2122. Conduct in aid of counterfeiting.

Subtitle F—Criminal History Background Checks

Sec. 2141. Short title.
Sec. 2142. Criminal history background checks.
Sec. 2143. Protect Act.
Sec. 2144. Reviews of criminal records of applicants for private security officer employment.
Sec. 2145. Task force on clearinghouse for IAFIS criminal history records.

Subtitle G—Protection of United States Aviation System from Terrorist Attacks

Sec. 2171. Provision for the use of biometric or other technology.
Sec. 2172. Transportation security strategic planning.
Sec. 2173. Next generation airline passenger prescreening.
Sec. 2174. Deployment and use of explosive detection equipment at airport screening checkpoints.
Sec. 2175. Pilot program to evaluate use of blast-resistant cargo and baggage containers.
Sec. 2176. Air cargo screening technology.
Sec. 2177. Airport checkpoint screening explosive detection.
Sec. 2178. Next generation security checkpoint.
Sec. 2179. Penalty for failure to secure cockpit door.
Sec. 2180. Federal air marshal anonymity.
Sec. 2181. Federal law enforcement counterterrorism training.
Sec. 2182. Federal flight deck officer weapon carriage pilot program.
Sec. 2183. Registered traveler program.
Sec. 2184. Wireless communication.
Sec. 2185. Secondary flight deck barriers.
Sec. 2186. Extension.
Sec. 2187. Perimeter Security.
Sec. 2188. Extremely hazardous materials transportation security.
Sec. 2189. Definitions.

Subtitle H—Other Matters

Sec. 2191. Grand jury information sharing.
Sec. 2192. Interoperable law enforcement and intelligence data system.
Sec. 2193. Improvement of intelligence capabilities of the Federal Bureau of Investigation.
Sec. 2194. Nuclear facility threats.
Sec. 2195. Authorization and Change of COPS Program to single Grant Program.

Subtitle I—Police Badges

Sec. 2201. Short title.
Sec. 2202. Police badges.

TITLE III—BORDER SECURITY AND TERRORIST TRAVEL

Subtitle A—Immigration Reform in the National Interest

CHAPTER 1—GENERAL PROVISIONS

Sec. 3001. Eliminating the "Western Hemisphere" exception for citizens.
Sec. 3002. Modification of waiver authority with respect to documentation requirements for nationals of foreign contiguous territories and adjacent islands.
Sec. 3003. Increase in full-time border patrol agents.
Sec. 3004. Increase in full-time immigration and customs enforcement investigators.
Sec. 3005. Alien identification standards.
Sec. 3006. Expedited removal.
Sec. 3007. Preventing terrorists from obtaining asylum.
Sec. 3008. Revocation of visas and other travel documentation.
Sec. 3009. Judicial review of orders of removal.

CHAPTER 2—DEPORTATION OF TERRORISTS AND SUPPORTERS OF TERRORISM

Sec. 3031. Expanded inapplicability of restriction on removal.
Sec. 3032. Exception to restriction on removal for terrorists and criminals.
Sec. 3033. Additional removal authorities.

CHAPTER 3—PREVENTING COMMERCIAL ALIEN SMUGGLING

Sec. 3041. Bringing in and harboring certain aliens.

Subtitle B—Identity Management Security

CHAPTER 1—IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL IDENTIFICATION CARDS

Sec. 3051. Definitions.
Sec. 3052. Minimum document requirements and issuance standards for Federal recognition.
Sec. 3053. Linking of databases.
Sec. 3054. Trafficking in authentication features for use in false identification documents.
Sec. 3055. Grants to States.
Sec. 3056. Authority.

CHAPTER 2—IMPROVED SECURITY FOR BIRTH CERTIFICATES

Sec. 3061. Definitions.
Sec. 3062. Applicability of minimum standards to local governments.
Sec. 3063. Minimum standards for Federal recognition.
Sec. 3064. Establishment of electronic birth and death registration systems.
Sec. 3065. Electronic verification of vital events.
Sec. 3066. Grants to States.
Sec. 3067. Authority.

CHAPTER 3—MEASURES TO ENHANCE PRIVACY AND INTEGRITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Sec. 3071. Prohibition of the display of social security account numbers on driver's licenses or motor vehicle registrations.
Sec. 3072. Independent verification of birth records provided in support of applications for social security account numbers.
Sec. 3073. Enumeration at birth.
Sec. 3074. Study relating to use of photographic identification in connection with applications for benefits, social security account numbers, and social security cards.
Sec. 3075. Restrictions on issuance of multiple replacement social security cards.
Sec. 3076. Study relating to modification of the social security account numbering system to show work authorization status.

Subtitle C—Targeting Terrorist Travel

Sec. 3081. Studies on machine-readable passports and travel history database.
Sec. 3082. Expanded preinspection at foreign airports.
Sec. 3083. Immigration security initiative.
Sec. 3084. Responsibilities and functions of consular officers.
Sec. 3085. Increase in penalties for fraud and related activity.
Sec. 3086. Criminal penalty for false claim to citizenship.
Sec. 3087. Antiterrorism assistance training of the Department of State.
Sec. 3088. International agreements to track and curtail terrorist travel through the use of fraudulently obtained documents.
Sec. 3089. International standards for translation of names into the Roman alphabet for international travel documents and name-based watchlist systems.
Sec. 3090. Biometric entry and exit data system.
Sec. 3091. Biometric entry-exit screening system.
Sec. 3092. Enhanced responsibilities of the Coordinator for Counterterrorism.
Sec. 3093. Establishment of Office of Visa and Passport Security in the Department of State.

Subtitle D—Terrorist Travel

Sec. 3101. Information sharing and coordination.
Sec. 3102. Terrorist travel program.
Sec. 3103. Training program.
Sec. 3104. Technology acquisition and dissemination plan.

Subtitle E—Maritime Security Requirements

Sec. 3111. Deadlines for implementation of maritime security requirements.

TITLE IV—INTERNATIONAL COOPERATION AND COORDINATION

Subtitle A—Attack Terrorists and Their Organizations

CHAPTER 1—PROVISIONS RELATING TO TERRORIST SANCTUARIES

Sec. 4001. United States policy on terrorist sanctuaries.
Sec. 4002. Reports on terrorist sanctuaries.
Sec. 4003. Amendments to existing law to include terrorist sanctuaries.

CHAPTER 2—OTHER PROVISIONS

Sec. 4011. Appointments to fill vacancies in Arms Control and Nonproliferation Advisory Board.
Sec. 4012. Review of United States policy on proliferation of weapons of mass destruction and control of strategic weapons.
Sec. 4013. International agreements to interdict acts of international terrorism.
Sec. 4014. Effective Coalition approach toward detention and humane treatment of captured terrorists.
Sec. 4015. Sense of Congress and report regarding counter-drug efforts in Afghanistan.

Subtitle B—Prevent the Continued Growth of Terrorism

CHAPTER 1—UNITED STATES PUBLIC DIPLOMACY

Sec. 4021. Annual review and assessment of public diplomacy strategy.
Sec. 4022. Public diplomacy training.
Sec. 4023. Promoting direct exchanges with Muslim countries.
Sec. 4024. Public diplomacy required for promotion in Foreign Service.

CHAPTER 2—UNITED STATES MULTILATERAL DIPLOMACY

Sec. 4031. Purpose.
Sec. 4032. Support and expansion of democracy caucus.
Sec. 4033. Leadership and membership of international organizations.
Sec. 4034. Increased training in multilateral diplomacy.
Sec. 4035. Implementation and establishment of Office on Multilateral Negotiations.

CHAPTER 3—OTHER PROVISIONS

Sec. 4041. Pilot program to provide grants to American-sponsored schools in predominantly Muslim countries to provide scholarships.
Sec. 4042. Enhancing free and independent media.
Sec. 4043. Combating biased or false foreign media coverage of the United States.
Sec. 4044. Report on broadcast outreach strategy.
Sec. 4045. Office relocation.
Sec. 4046. Strengthening the Community of Democracies for Muslim countries.

Subtitle C—Reform of Designation of Foreign Terrorist Organizations

Sec. 4051. Designation of foreign terrorist organizations.
Sec. 4052. Inclusion in annual Department of State country reports on terrorism of information on terrorist groups that seek weapons of mass destruction and groups that have been designated as foreign terrorist organizations.

Subtitle D—Afghanistan Freedom Support Act Amendments of 2004

Sec. 4061. Short title.
Sec. 4062. Coordination of assistance for Afghanistan.
Sec. 4063. General provisions relating to the Afghanistan Freedom Support Act of 2002.
Sec. 4064. Rule of law and related issues.
Sec. 4065. Monitoring of assistance.
Sec. 4066. United States policy to support disarmament of private militias and to support expansion of international peacekeeping and security operations in Afghanistan.
Sec. 4067. Efforts to expand international peacekeeping and security operations in Afghanistan.
Sec. 4068. Provisions relating to counternarcotics efforts in Afghanistan.
Sec. 4069. Additional amendments to the Afghanistan Freedom Support Act of 2002.
Sec. 4070. Repeal.

Subtitle E—Provisions Relating to Saudi Arabia and Pakistan

Sec. 4081. New United States strategy for relationship with Saudi Arabia.
Sec. 4082. United States commitment to the future of Pakistan.
Sec. 4083. Extension of Pakistan waivers.

Subtitle F—Oversight Provisions

Sec. 4091. Case-Zablocki Act requirements.

Subtitle G—Additional Protections of United States Aviation System from Terrorist Attacks

Sec. 4101. International agreements to allow maximum deployment of Federal flight deck officers.
Sec. 4102. Federal air marshal training.
Sec. 4103. Man-portable air defense systems (MANPADS).

Subtitle H—Improving International Standards and Cooperation to Fight Terrorist Financing

Sec. 4111. Sense of the Congress regarding success in multilateral organizations.
Sec. 4112. Expanded reporting requirement for the Secretary of the Treasury.
Sec. 4113. International Terrorist Finance Coordinating Council.
Sec. 4114. Definitions.

TITLE V—GOVERNMENT RESTRUCTURING

Subtitle A—Faster and Smarter Funding for First Responders

Sec. 5001. Short title.
Sec. 5002. Findings.
Sec. 5003. Faster and smarter funding for first responders.
Sec. 5004. Modification of homeland security advisory system.
Sec. 5005. Coordination of industry efforts.
Sec. 5006. Superseded provision.
Sec. 5007. Sense of Congress regarding interoperable communications.
Sec. 5008. Sense of Congress regarding citizen corps councils.
Sec. 5009. Study regarding nationwide emergency notification system.
Sec. 5010. Required coordination.

Subtitle B—Government Reorganization Authority

Sec. 5021. Authorization of intelligence community reorganization plans.
Sec. 5022. Authority to enter into contracts and issue Federal loan guarantees.

Subtitle C—Restructuring Relating to the Department of Homeland Security and Congressional Oversight

Sec. 5025. Responsibilities of Counternarcotics Office.
Sec. 5026. Use of counternarcotics enforcement activities in certain employee performance appraisals.
Sec. 5027. Sense of the House of Representatives on addressing homeland security for the American people.

Subtitle D—Improvements to Information Security

Sec. 5031. Amendments to Clinger-Cohen provisions to enhance agency planning for information security needs.

Subtitle E—Personnel Management Improvements

CHAPTER 1—APPOINTMENTS PROCESS REFORM

Sec. 5041. Appointments to national security positions.
Sec. 5042. Presidential inaugural transitions.
Sec. 5043. Public financial disclosure for the intelligence community.
Sec. 5044. Reduction of positions requiring appointment with Senate confirmation.
Sec. 5045. Effective dates.

CHAPTER 2—FEDERAL BUREAU OF INVESTIGATION REVITALIZATION

Sec. 5051. Mandatory separation age.
Sec. 5052. Retention and relocation bonuses.
Sec. 5053. Federal Bureau of Investigation Reserve Service.
Sec. 5054. Critical positions in the Federal Bureau of Investigation intelligence directorate.

CHAPTER 3—MANAGEMENT AUTHORITY

Sec. 5061. Management authority.

Subtitle F—Security Clearance Modernization

Sec. 5071. Definitions.
Sec. 5072. Security clearance and investigative programs oversight and administration.
Sec. 5073. Reciprocity of security clearance and access determinations.
Sec. 5074. Establishment of national database .
Sec. 5075. Use of available technology in clearance investigations.
Sec. 5076. Reduction in length of personnel security clearance process.

Sec. 5077. Security clearances for presidential transition.
Sec. 5078. Reports.

Subtitle G—Emergency Financial Preparedness

Sec. 5081. Delegation authority of the Secretary of the Treasury.
Sec. 5082. Extension of emergency order authority of the securities and exchange commission.
Sec. 5083. Parallel authority of the Secretary of the Treasury with respect to government securities.

Subtitle H—Other Matters

CHAPTER 1—PRIVACY MATTERS

Sec. 5091. Requirement that agency rulemaking take into consideration impacts on individual privacy.
Sec. 5092. Chief privacy officers for agencies with law enforcement or anti-terrorism functions.
Sec. 5093. Data-mining report.
Sec. 5094. Privacy and civil liberties oversight board.

CHAPTER 2—MUTUAL AID AND LITIGATION MANAGEMENT

Sec. 5101. Short title.
Sec. 5102. Mutual aid authorized.
Sec. 5103. Litigation management agreements.
Sec. 5104. Additional provisions.
Sec. 5105. Definitions.

CHAPTER 3—MISCELLANEOUS MATTERS

Sec. 5131. Enhancement of public safety communications interoperability.
Sec. 5132. Sense of Congress regarding the incident command system.
Sec. 5133. Sense of Congress regarding United States Northern Command plans and strategies.

TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

SEC. 1001. SHORT TITLE.

This title may be cited as the "National Security Intelligence Improvement Act of 2004".

Subtitle A—Establishment of National Intelligence Director

SEC. 1011. REORGANIZATION AND IMPROVEMENT OF MANAGEMENT OF INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking sections 102 through 104 and inserting the following new sections:

"NATIONAL INTELLIGENCE DIRECTOR

"SEC. 102. (a) NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) The National Intelligence Director shall not be located within the Executive Office of the President.

"(b) PRINCIPAL RESPONSIBILITY.—Subject to the authority, direction, and control of the President, the National Intelligence Director shall—

"(1) serve as head of the intelligence community;

"(2) act as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security; and

"(3) through the heads of the departments containing elements of the intelligence community, and the Central Intelligence Agency, manage and oversee the execution of the National Intelligence Program and direct the National Intelligence Program.

"(c) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of National Intelligence Director shall not, while so serving, also serve as the Director of the Central Intelligence Agency or as the head of any other element of the intelligence community.

"RESPONSIBILITIES AND AUTHORITIES OF THE NATIONAL INTELLIGENCE DIRECTOR

"SEC. 102A. (a) PROVISION OF INTELLIGENCE.—(1) Under the direction of the President, the National Intelligence Director shall be responsible for ensuring that national intelligence is provided—

"(A) to the President;

"(B) to the heads of departments and agencies of the executive branch;

"(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

"(D) where appropriate, to the Senate and House of Representatives and the committees thereof; and

"(E) to such other persons as the National Intelligence Director determines to be appropriate.

"(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities.

"(b) ACCESS TO INTELLIGENCE.—To the extent approved by the President, the National Intelligence Director shall have access to all national intelligence and intelligence related to the national security which is collected by any Federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the National Intelligence Director.

"(c) BUDGET AUTHORITIES.—(1)(A) The National Intelligence Director shall develop and present to the President on an annual basis a budget for intelligence and intelligence-related activities of the United States.

"(B) In carrying out subparagraph (A) for any fiscal year for the components of the budget that comprise the National Intelligence Program, the National Intelligence Director shall provide guidance to the heads of departments containing elements of the intelligence community, and to the heads of the elements of the intelligence community, for development of budget inputs to the National Intelligence Director.

"(2)(A) The National Intelligence Director shall participate in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program and for Tactical Intelligence and Related Activities.

"(B) The National Intelligence Director shall provide guidance for the development of the annual budget for each element of the intelligence community that is not within the National Intelligence Program.

"(3) In carrying out paragraphs (1) and (2), the National Intelligence Director may, as appropriate, obtain the advice of the Joint Intelligence Community Council.

"(4) The National Intelligence Director shall ensure the effective execution of the annual budget for intelligence and intelligence-related activities.

"(5)(A) The National Intelligence Director shall facilitate the management and execution of funds appropriated for the National Intelligence Program.

"(B) Notwithstanding any other provision of law, in receiving funds pursuant to relevant appropriations Acts for the National Intelligence Program, the Office of Management and Budget shall apportion funds appropriated for the National Intelligence Program to the National Intelligence Director for allocation to the elements of the intelligence community through the host executive departments that manage programs and activities that are part of the National Intelligence Program.

"(C) The National Intelligence Director shall monitor the implementation and execution of the National Intelligence Program by the heads of the elements of the intelligence community that manage programs and activities that are part of the National Intelligence Program, which may include audits and evaluations, as necessary and feasible.

"(6) Apportionment and allotment of funds under this subsection shall be subject to chapter 13 and section 1517 of title 31, United States Code, and the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.).

"(7)(A) The National Intelligence Director shall provide a quarterly report, beginning April 1, 2005, and ending April 1, 2007, to the President and the Congress regarding implementation of this section.

"(B) The National Intelligence Director shall report to the President and the Congress not later than 5 days after learning of any instance in which a departmental comptroller acts in a manner inconsistent with the law (including permanent statutes, authorization Acts, and appropriations Acts), or the direction of the National Intelligence Director, in carrying out the National Intelligence Program.

"(d) ROLE OF NATIONAL INTELLIGENCE DIRECTOR IN REPROGRAMMING.—(1) No funds made available under the National Intelligence Program may be transferred or reprogrammed without the prior approval of the National Intelligence Director, except in accordance with procedures prescribed by the National Intelligence Director.

"(2) The Secretary of Defense shall consult with the National Intelligence Director before transferring or reprogramming funds made available under the Joint Military Intelligence Program.

"(e) TRANSFER OF FUNDS OR PERSONNEL WITHIN NATIONAL INTELLIGENCE PROGRAM.—(1) In addition to any other authorities available under law for such purposes, the National Intelligence Director, with the approval of the Director of the Office of Management and Budget—

"(A) may transfer funds appropriated for a program within the National Intelligence Program to another such program; and

"(B) in accordance with procedures to be developed by the National Intelligence Director and the heads of the departments and agencies concerned, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to one year.

"(2) The amounts available for transfer in the National Intelligence Program in any given fiscal year, and the terms and conditions governing such transfers, are subject to the provisions of annual appropriations Acts and this subsection.

"(3)(A) A transfer of funds or personnel may be made under this subsection only if—

"(i) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

"(ii) the need for funds or personnel for such activity is based on unforeseen requirements;

"(iii) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency;

"(iv) in the case of a transfer of funds, the transfer results in a cumulative transfer of funds out of any department or agency, as appropriate, funded in the National Intelligence Program in a single fiscal year—

"(I) that is less than $100,000,000, and

"(II) that is less than 5 percent of amounts available to a department or agency under the National Intelligence Program; and

"(v) the transfer does not terminate a program.

"(B) A transfer may be made without regard to a limitation set forth in clause (iv) or (v) of subparagraph (A) if the transfer has the concurrence of the head of the department or agency involved. The authority to provide such concurrence may only be delegated by the head of the department or agency involved to the deputy of such officer.

"(4) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

"(5) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this subsection.

"(6)(A) The National Intelligence Director shall promptly submit to—

"(i) the congressional intelligence committees,

"(ii) in the case of the transfer of personnel to or from the Department of Defense, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and

"(iii) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives,

a report on any transfer of personnel made pursuant to this subsection.

"(B) The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

"(f) TASKING AND OTHER AUTHORITIES.—(1)(A) The National Intelligence Director shall—

"(i) develop collection objectives, priorities, and guidance for the intelligence community to ensure timely and effective collection, processing, analysis, and dissemination (including access by users to collected data consistent with applicable law and, as appropriate, the guidelines referred to in subsection (b) and analytic products generated by or within the intelligence community) of national intelligence;

"(ii) determine and establish requirements and priorities for, and manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the intelligence community, including—

"(I) approving requirements for collection and analysis, and

"(II) resolving conflicts in collection requirements and in the tasking of national collection assets of the elements of the intelligence community; and

"(iii) provide advisory tasking to intelligence elements of those agencies and departments not within the National Intelligence Program.

"(B) The authority of the National Intelligence Director under subparagraph (A) shall not apply—

"(i) insofar as the President so directs;

"(ii) with respect to clause (ii) of subparagraph (A), insofar as the Secretary of Defense exercises tasking authority under plans or arrangements agreed upon by the Secretary of Defense and the National Intelligence Director; or

"(iii) to the direct dissemination of information to State government and local government officials and private sector entities pursuant to sections 201 and 892 of the Homeland Security Act of 2002 (6 U.S.C. 121, 482).

"(2) The National Intelligence Director shall oversee the National Counterterrorism Center and may establish such other national intelligence centers as the Director determines necessary.

"(3)(A) The National Intelligence Director shall prescribe community-wide personnel policies that—

"(i) facilitate assignments across community elements and to the intelligence centers;

"(ii) establish overarching standards for intelligence education and training; and

"(iii) promote the most effective analysis and collection of intelligence by ensuring a diverse workforce, including the recruitment and training of women, minorities, and individuals with diverse, ethnic, and linguistic backgrounds.

"(B) In developing the policies prescribed under subparagraph (A), the National Intelligence Director shall consult with the heads of the departments containing the elements of the intelligence community.

"(C) Policies prescribed under subparagraph (A) shall not be inconsistent with the personnel policies otherwise applicable to members of the uniformed services.

"(4) The National Intelligence Director shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency and shall ensure such compliance by other elements of the intelligence community through the host executive departments that manage the programs and activities that are part of the National Intelligence Program.

"(5) The National Intelligence Director shall ensure the elimination of waste and unnecessary duplication within the intelligence community.

"(6) The National Intelligence Director shall perform such other functions as the President may direct.

Nothing in this Act shall be construed as affecting the role of the Department of Justice or the Attorney General with respect to applications under the Foreign Intelligence Surveillance Act of 1978.

"(g) INTELLIGENCE INFORMATION SHARING.—(1) The National Intelligence Director shall have principal authority to ensure maximum availability of and access to intelligence information within the intelligence community consistent with national security requirements. The National Intelligence Director shall—

"(A) establish uniform security standards and procedures;

"(B) establish common information technology standards, protocols, and interfaces;

"(C) ensure development of information technology systems that include multi-level security and intelligence integration capabilities; and

"(D) establish policies and procedures to resolve conflicts between the need to share intelligence information and the need to protect intelligence sources and methods.

"(2) The President shall ensure that the National Intelligence Director has all necessary support and authorities to fully and effectively implement paragraph (1).

"(3) Except as otherwise directed by the President or with the specific written agreement of the head of the department or agency in question, a Federal agency or official shall not be considered to have met any obligation to provide any information, report, assessment, or other material (including unevaluated intelligence information) to that department or agency solely by virtue of having provided that information, report, assessment, or other material to the National Intelligence Director or the National Counterterrorism Center.

"(4) Not later than February 1 of each year, the National Intelligence Director shall submit to the President and to the Congress an annual report that identifies any statute, regulation, policy, or practice that the Director believes impedes the ability of the Director to fully and effectively implement paragraph (1).

"(h) ANALYSIS.—(1) The National Intelligence Director shall ensure that all elements of the intelligence community strive for the most accurate analysis of intelligence derived from all sources to support national security needs.

"(2) The National Intelligence Director shall ensure that intelligence analysis generally receives the highest priority when distributing resources within the intelligence community and shall carry out duties under this subsection in a manner that—

"(A) develops all-source analysis techniques;

"(B) ensures competitive analysis;

"(C) ensures that differences in judgment are fully considered and brought to the attention of policymakers; and

"(D) builds relationships between intelligence collectors and analysts to facilitate greater understanding of the needs of analysts.

"(i) PROTECTION OF INTELLIGENCE SOURCES AND METHODS.—(1) In order to protect intelligence sources and methods from unauthorized disclosure and, consistent with that protection, to maximize the dissemination of intelligence, the National Intelligence Director shall establish and implement guidelines for the intelligence community for the following purposes:

"(A) Classification of information.

"(B) Access to and dissemination of intelligence, both in final form and in the form when initially gathered.

"(C) Preparation of intelligence products in such a way that source information is removed to allow for dissemination at the lowest level of classification possible or in unclassified form to the extent practicable.

"(2) The Director may only delegate a duty or authority given the Director under this subsection to the Deputy National Intelligence Director.

"(j) UNIFORM PROCEDURES FOR SENSITIVE COMPARTMENTED INFORMATION.—The President, acting through the National Intelligence Director, shall—

"(1) establish uniform standards and procedures for the grant of access to sensitive compartmented information to any officer or employee of any agency or department of the United States and to employees of contractors of those agencies or departments;

"(2) ensure the consistent implementation of those standards and procedures throughout such agencies and departments;

"(3) ensure that security clearances granted by individual elements of the intelligence community are recognized by all elements of the intelligence community, and under contracts entered into by those agencies; and

"(4) ensure that the process for investigation and adjudication of an application for access to sensitive compartmented information is performed in the most expeditious manner possible consistent with applicable standards for national security.

"(k) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the President and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the National Intelligence Director shall oversee the coordination of the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

"(l) ENHANCED PERSONNEL MANAGEMENT.—(1)(A) The National Intelligence Director shall, under regulations prescribed by the Director, provide incentives for personnel of elements of the intelligence community to serve—

"(i) on the staff of the National Intelligence Director;

"(ii) on the staff of the national intelligence centers;

"(iii) on the staff of the National Counterterrorism Center; and

"(iv) in other positions in support of the intelligence community management functions of the Director.

"(B) Incentives under subparagraph (A) may include financial incentives, bonuses, and such other awards and incentives as the Director considers appropriate.

"(2)(A) Notwithstanding any other provision of law, the personnel of an element of the intelligence community who are assigned or detailed under paragraph (1)(A) to service under the National Intelligence Director shall be promoted at rates equivalent to or better than personnel of such element who are not so assigned or detailed.

"(B) The Director may prescribe regulations to carry out this section.

"(3)(A) The National Intelligence Director shall prescribe mechanisms to facilitate the rotation of personnel of the intelligence community through various elements of the intelligence community in the course of their careers in order to facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, users, and capabilities.

"(B) The mechanisms prescribed under subparagraph (A) may include the following:

"(i) The establishment of special occupational categories involving service, over the course of a career, in more than one element of the intelligence community.

"(ii) The provision of rewards for service in positions undertaking analysis and planning of operations involving two or more elements of the intelligence community.

"(iii) The establishment of requirements for education, training, service, and evaluation that involve service in more than one element of the intelligence community.

"(C) It is the sense of Congress that the mechanisms prescribed under this subsection should, to the extent practical, seek to duplicate for civilian personnel within the intelligence community the joint officer management policies established by chapter 38 of title 10, United States Code, and the other amendments made by title IV of the Goldwater–Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433).

"(4)(A) This subsection shall not apply with respect to personnel of the elements of the intelligence community who are members of the uniformed services or law enforcement officers (as that term is defined in section 5541(3) of title 5, United States Code).

"(B) Assignment to the Office of the National Intelligence Director of commissioned officers of the Armed Forces shall be considered a joint-duty assignment for purposes of the joint officer management policies prescribed by chapter 38 of title 10, United States Code, and other provisions of that title.

"(m) ADDITIONAL AUTHORITY WITH RESPECT TO PERSONNEL.—(1) In addition to the authorities under subsection (f)(3), the National Intelligence Director may exercise with respect to the personnel of the Office of the National Intelligence Director any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), and other applicable provisions of law, as of the date of the enactment of this subsection to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

"(2) Employees and applicants for employment of the Office of the National Intelligence Director shall have the same rights and protections under the Office of the National Intelligence Director as employees of the Central Intelligence Agency have under the Central Intelligence Agency Act of 1949, and other applicable provisions of law, as of the date of the enactment of this subsection.

"(n) ACQUISITION AUTHORITIES.—(1) In carrying out the responsibilities and authorities under this section, the National Intelligence Director may exercise the acquisition authorities referred to in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.).

"(2) For the purpose of the exercise of any authority referred to in paragraph (1), a reference to the head of an agency shall be deemed to be a reference to the National Intelligence Director or the Deputy National Intelligence Director.

"(3)(A) Any determination or decision to be made under an authority referred to in paragraph (1) by the head of an agency may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final.

"(B) Except as provided in subparagraph (C), the National Intelligence Director or the Deputy National Intelligence Director may, in such official's discretion, delegate to any officer or other official of the Office of the National Intelligence Director any authority to make a determination or decision as the head of the agency under an authority referred to in paragraph (1).

"(C) The limitations and conditions set forth in section 3(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c(d)) shall apply to the exercise by the National Intelligence Director of an authority referred to in paragraph (1).

"(D) Each determination or decision required by an authority referred to in the second sentence of section 3(d) of the Central Intelligence Agency Act of 1949 shall be based upon written findings made by the official making such determination or decision, which findings shall be final and shall be available within the Office of the National Intelligence Director for a period of at least six years following the date of such determination or decision.

"(o) CONSIDERATION OF VIEWS OF ELEMENTS OF THE INTELLIGENCE COMMUNITY.—In carrying out the duties and responsibilities under this section, the National Intelligence Director shall take into account the views of a head of a department containing an element of the intelligence community and of the Director of the Central Intelligence Agency.

"OFFICE OF THE NATIONAL INTELLIGENCE DIRECTOR

"SEC. 103. (a) ESTABLISHMENT OF OFFICE; FUNCTION.—(1) There is an Office of the National Intelligence Director. The Office of the National Intelligence Director shall not be located within the Executive Office of the President.

"(2) The function of the Office is to assist the National Intelligence Director in carrying out the duties and responsibilities of the Director under this Act and to carry out such other duties as may be prescribed by the President or by law.

"(3) Any authority, power, or function vested by law in any officer, employee, or part of the Office of the National Intelligence Director is vested in, or may be exercised by, the National Intelligence Director.

"(4) Exemptions, exceptions, and exclusions for the Central Intelligence Agency or for personnel, resources, or activities of such Agency from otherwise applicable laws, other than the exception contained in section 104A(c)(1) shall apply in the same manner to the Office of the National Intelligence Director and the personnel, resources, or activities of such Office.

"(b) OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—(1) The Office of the National Intelligence Director is composed of the following:

"(A) The National Intelligence Director.

"(B) The Deputy National Intelligence Director.

"(C) The Deputy National Intelligence Director for Operations.

"(D) The Deputy National Intelligence Director for Community Management and Resources.

"(E) The Associate National Intelligence Director for Military Support.

"(F) The Associate National Intelligence Director for Domestic Security.

"(G) The Associate National Intelligence Director for Diplomatic Affairs.

"(H) The National Intelligence Council.

"(I) The General Counsel to the National Intelligence Director.

"(J) Such other offices and officials as may be established by law or the National Intelligence Director may establish or designate in the Office.

"(2) To assist the National Intelligence Director in fulfilling the duties and responsibilities of the Director, the Director shall employ and utilize in the Office of the National Intelligence Director a staff having expertise in matters relating to such duties and responsibilities and may establish permanent positions and appropriate rates of pay with respect to such staff.

"(c) DEPUTY NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a Deputy National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) The Deputy National Intelligence Director shall assist the National Intelligence Director in carrying out the responsibilities of the National Intelligence Director under this Act.

"(3) The Deputy National Intelligence Director shall act for, and exercise the powers of, the National Intelligence Director during the absence or disability of the National Intelligence Director or during a vacancy in the position of the National Intelligence Director.

"(4) The Deputy National Intelligence Director takes precedence in the Office of the National Intelligence Director immediately after the National Intelligence Director.

"(d) DEPUTY NATIONAL INTELLIGENCE DIRECTOR FOR OPERATIONS.—(1) There is a Deputy National Intelligence Director for Operations.

"(2) The Deputy National Intelligence Director for Operations shall—

"(A) assist the National Intelligence Director in all aspects of intelligence operations, including intelligence tasking, requirements, collection, and analysis;

"(B) assist the National Intelligence Director in overseeing the national intelligence centers; and

"(C) perform such other duties and exercise such powers as National Intelligence Director may prescribe.

"(e) DEPUTY NATIONAL INTELLIGENCE DIRECTOR FOR COMMUNITY MANAGEMENT AND RESOURCES.—(1) There is a Deputy National Intelligence Director for Community Management and Resources.

"(2) The Deputy National Intelligence Director for Community Management and Resources shall—

"(A) assist the National Intelligence Director in all aspects of management and resources, including administration, budgeting, information security, personnel, training, and programmatic functions; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(f) ASSOCIATE NATIONAL INTELLIGENCE DIRECTOR FOR MILITARY SUPPORT.—(1) There is an Associate National Intelligence Director for Military Support who shall

be appointed by the National Intelligence Director, in consultation with the Secretary of Defense.

"(2) The Associate National Intelligence Director for Military Support shall—

"(A) ensure that the intelligence needs of the Department of Defense are met; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(g) ASSOCIATE NATIONAL INTELLIGENCE DIRECTOR FOR DOMESTIC SECURITY.—(1) There is an Associate National Intelligence Director for Domestic Security who shall be appointed by the National Intelligence Director in consultation with the Attorney General and the Secretary of Homeland Security.

"(2) The Associate National Intelligence Director for Domestic Security shall—

"(A) ensure that the intelligence needs of the Department of Justice, the Department of Homeland Security, and other relevant executive departments and agencies are met; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe, except that the National Intelligence Director may not make such officer responsible for disseminating any domestic or homeland security information to State government or local government officials or any private sector entity.

"(h) ASSOCIATE NATIONAL INTELLIGENCE DIRECTOR FOR DIPLOMATIC AFFAIRS.—(1) There is an Associate National Intelligence Director for Diplomatic Affairs who shall be appointed by the National Intelligence Director in consultation with the Secretary of State.

"(2) The Associate National Intelligence Director for Diplomatic Affairs shall—

"(A) ensure that the intelligence needs of the Department of State are met; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(i) MILITARY STATUS OF DIRECTOR AND DEPUTY DIRECTORS.—(1) Not more than one of the individuals serving in the positions specified in paragraph (2) may be a commissioned officer of the Armed Forces in active status.

"(2) The positions referred to in this paragraph are the following:

"(A) The National Intelligence Director.

"(B) The Deputy National Intelligence Director.

"(3) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (2)—

"(A) be a commissioned officer of the Armed Forces, in active status; or

"(B) have, by training or experience, an appreciation of military intelligence activities and requirements.

"(4) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (2)—

"(A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;

"(B) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and

"(C) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.

"(5) Except as provided in subparagraph (A) or (B) of paragraph (4), the appointment of an officer of the Armed Forces to a position specified in paragraph (2) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

"(6) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (2), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the National Intelligence Director.

"(j) NATIONAL INTELLIGENCE COUNCIL.—(1) Within the Office of the Deputy National Intelligence Director for Operations, there is a National Intelligence Council.

"(2)(A) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by and report to the Deputy National Intelligence Director for Operations.

"(B) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

"(3) The National Intelligence Council shall—

"(A) produce national intelligence estimates for the United States Government, which shall include as a part of such estimates in their entirety, alternative views, if any, held by elements of the intelligence community;

"(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

"(C) otherwise assist the National Intelligence Director in carrying out the responsibility of the National Intelligence Director to provide national intelligence.

"(4) Within their respective areas of expertise and under the direction of the Deputy National Intelligence Director for Operations, the members of the National Intelligence Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the United States Government.

"(5) Subject to the direction and control of the Deputy National Intelligence Director for Operations, the National Intelligence Council may carry out its responsibilities under this section by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this subsection.

"(6) The Deputy National Intelligence Director for Operations shall make available to the National Intelligence Council such personnel as may be necessary to permit the Council to carry out its responsibilities under this section.

"(7) The heads of the elements of the intelligence community shall, as appropriate, furnish such support to the National Intelligence Council, including the preparation of intelligence analyses, as may be required by the National Intelligence Director.

"(k) GENERAL COUNSEL TO THE NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a General Counsel to the National Intelligence Director.

"(2) The individual serving in the position of General Counsel to the National Intelligence Director may not, while so serving, also serve as the General Counsel of any other agency or department of the United States.

"(3) The General Counsel to the National Intelligence Director is the chief legal officer for the National Intelligence Director.

"(4) The General Counsel to the National Intelligence Director shall perform such functions as the National Intelligence Director may prescribe.

"(l) INTELLIGENCE COMMUNITY INFORMATION TECHNOLOGY OFFICER.—(1) There is an Intelligence Community Information Technology Officer who shall be appointed by the National Intelligence Director.

"(2) The mission of the Intelligence Community Information Technology Officer is to assist the National Intelligence Director in ensuring the sharing of information in the fullest and most prompt manner between and among elements of the intelligence community consistent with section 102A(g).

"(3) The Intelligence Community Information Technology Officer shall—

"(A) assist the Deputy National Intelligence Director for Community Management and Resources in developing and implementing an integrated information technology network;

"(B) develop an enterprise architecture for the intelligence community and assist the Deputy National Intelligence Director for Community Management and Resources in ensuring that elements of the intelligence community comply with such architecture;

"(C) have procurement approval authority over all enterprise architecture-related information technology items funded in the National Intelligence Program;

"(D) ensure that all such elements have the most direct and continuous electronic access to all information (including unevaluated intelligence consistent with existing laws and the guidelines referred to in section 102A(b)) necessary for appropriately cleared analysts to conduct comprehensive all-source analysis and for appropriately cleared policymakers to perform their duties—

"(i) directly, in the case of the elements of the intelligence community within the National Intelligence Program, and

"(ii) in conjunction with the Secretary of Defense and other applicable heads of departments with intelligence elements outside the National Intelligence Program;

"(E) review and provide recommendations to the Deputy National Intelligence Director for Community Management and Resources on National Intelligence

Program budget requests for information technology and national security systems;

"(F) assist the Deputy National Intelligence Director for Community Management and Resources in promulgating and enforcing standards on information technology and national security systems that apply throughout the elements of the intelligence community;

"(G) ensure that within and between the elements of the National Intelligence Program, duplicative and unnecessary information technology and national security systems are eliminated; and

"(H) pursuant to the direction of the National Intelligence Director, consult with the Director of the Office of Management and Budget to ensure that the Office of the National Intelligence Director coordinates and complies with national security requirements consistent with applicable law, Executive orders, and guidance; and

"(I) perform such other duties with respect to the information systems and information technology of the Office of the National Intelligence Director as may be prescribed by the Deputy National Intelligence Director for Community Management and Resources or specified by law.

"CENTRAL INTELLIGENCE AGENCY

"SEC. 104. (a) CENTRAL INTELLIGENCE AGENCY.—There is a Central Intelligence Agency.

"(b) FUNCTION.—The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 104A(c).

"DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

"SEC. 104A. (a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—There is a Director of the Central Intelligence Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be under the authority, direction, and control of the National Intelligence Director, except as otherwise determined by the President.

"(b) DUTIES.—In the capacity as Director of the Central Intelligence Agency, the Director of the Central Intelligence Agency shall—

"(1) carry out the responsibilities specified in subsection (c); and

"(2) serve as the head of the Central Intelligence Agency.

"(c) RESPONSIBILITIES.—The Director of the Central Intelligence Agency shall—

"(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

"(2) provide overall direction for the collection of national intelligence overseas or outside of the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized;

"(3) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

"(4) perform such additional services as are of common concern to the elements of the intelligence community, which services the National Intelligence Director determines can be more efficiently accomplished centrally; and

"(5) perform such other functions and duties related to intelligence affecting the national security as the President or the National Intelligence Director may direct.

"(d) DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.—There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President. The Deputy Director shall perform such functions as the Director may prescribe and shall perform the duties of the Director during the Director's absence or disability or during a vacancy in the position of the Director of the Central Intelligence Agency.

"(e) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

"(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment

in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.".

(b) FIRST DIRECTOR.—(1) When the Senate receives the nomination of a person for the initial appointment by the President for the position of National Intelligence Director, it shall consider and dispose of such nomination within a period of 30 legislative days.

(2) If the Senate does not dispose of such nomination referred to in paragraph (1) within such period—

(A) Senate confirmation is not required; and

(B) the appointment of such nominee as National Intelligence Director takes effect upon administration of the oath of office.

(3) For the purposes of this subsection, the term "legislative day" means a day on which the Senate is in session.

SEC. 1012. REVISED DEFINITION OF NATIONAL INTELLIGENCE.

Paragraph (5) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

"(5) The terms 'national intelligence' and 'intelligence related to national security' refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—

"(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and

"(B) that involves—

"(i) threats to the United States, its people, property, or interests;

"(ii) the development, proliferation, or use of weapons of mass destruction; or

"(iii) any other matter bearing on United States national or homeland security.".

SEC. 1013. JOINT PROCEDURES FOR OPERATIONAL COORDINATION BETWEEN DEPARTMENT OF DEFENSE AND CENTRAL INTELLIGENCE AGENCY.

(a) DEVELOPMENT OF PROCEDURES.—The National Intelligence Director, in consultation with the Secretary of Defense and the Director of the Central Intelligence Agency, shall develop joint procedures to be used by the Department of Defense and the Central Intelligence Agency to improve the coordination and deconfliction of operations that involve elements of both the Armed Forces and the Central Intelligence Agency consistent with national security and the protection of human intelligence sources and methods. Those procedures shall, at a minimum, provide the following:

(1) Methods by which the Director of the Central Intelligence Agency and the Secretary of Defense can improve communication and coordination in the planning, execution, and sustainment of operations, including, as a minimum—

(A) information exchange between senior officials of the Central Intelligence Agency and senior officers and officials of the Department of Defense when planning for such an operation commences by either organization; and

(B) exchange of information between the Secretary and the Director of the Central Intelligence Agency to ensure that senior operational officials in both the Department of Defense and the Central Intelligence Agency have knowledge of the existence of the ongoing operations of the other.

(2) When appropriate, in cases where the Department of Defense and the Central Intelligence Agency are conducting separate missions in the same geographical area, mutual agreement on the tactical and strategic objectives for the region and a clear delineation of operational responsibilities to prevent conflict and duplication of effort.

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of the Act, the National Intelligence Director shall submit to the congressional defense committees (as defined in section 101 of title 10, United States Code) and the congressional intelligence committees (as defined in section 3(7) of the National Security Act of 1947 (50 U.S.C. 401a(7))) a report describing the procedures established pursuant to subsection (a) and the status of the implementation of those procedures.

SEC. 1014. ROLE OF NATIONAL INTELLIGENCE DIRECTOR IN APPOINTMENT OF CERTAIN OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES.

Section 106 of the National Security Act of 1947 (50 U.S.C. 403–6) is amended by striking all after the heading and inserting the following:

"(a) RECOMMENDATION OF NID IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the National Intelligence Director shall recommend to the President an individual for nomination to fill the vacancy.

"(2) Paragraph (1) applies to the following positions:

"(A) The Deputy National Intelligence Director.

"(B) The Director of the Central Intelligence Agency.

"(b) CONCURRENCE OF NID IN APPOINTMENTS TO POSITIONS IN THE INTELLIGENCE COMMUNITY.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the National Intelligence Director before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may not fill the vacancy or make the recommendation to the President (as the case may be).

"(2) Paragraph (1) applies to the following positions:

"(A) The Director of the National Security Agency.

"(B) The Director of the National Reconnaissance Office.

"(C) The Director of the National Geospatial-Intelligence Agency.

"(c) CONSULTATION WITH NATIONAL INTELLIGENCE DIRECTOR IN CERTAIN POSITIONS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the National Intelligence Director before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.

"(2) Paragraph (1) applies to the following positions:

"(A) The Director of the Defense Intelligence Agency.

"(B) The Assistant Secretary of State for Intelligence and Research.

"(C) The Director of the Office of Intelligence of the Department of Energy.

"(D) The Director of the Office of Counterintelligence of the Department of Energy.

"(E) The Assistant Secretary for Intelligence and Analysis of the Department of the Treasury.

"(F) The Executive Assistant Director for Intelligence of the Federal Bureau of Investigation or that officer's successor.

"(G) The Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.

"(H) The Deputy Assistant Commandant of the Coast Guard for Intelligence.

SEC. 1015. INITIAL APPOINTMENT OF THE NATIONAL INTELLIGENCE DIRECTOR.

(a) INITIAL APPOINTMENT OF THE NATIONAL INTELLIGENCE DIRECTOR.—Notwithstanding section 102(a)(1) of the National Security Act of 1947, as added by section 1011(a), the individual serving as the Director of Central Intelligence on the date immediately preceding the date of the enactment of this Act may, at the discretion of the President, become the National Intelligence Director as of the date of the enactment of this Act.

(b) GENERAL REFERENCES.—(1) Any reference to the Director of Central Intelligence in the Director's capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the National Intelligence Director.

(2) Any reference to the Director of Central Intelligence in the Director's capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(3) Any reference to the Deputy Director of Central Intelligence in the Deputy Director's capacity as deputy to the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Deputy National Intelligence Director.

(4) Any reference to the Deputy Director of Central Intelligence for Community Management in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Deputy National Intelligence Director for Community Management and Resources.

SEC. 1016. EXECUTIVE SCHEDULE MATTERS.

(a) EXECUTIVE SCHEDULE LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding the end the following new item:

"National Intelligence Director.".

(b) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following new items:

"Deputy National Intelligence Director.

"Director of the National Counterterrorism Center.".

(c) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Assistant Directors of Central Intelligence.

Subtitle B—National Counterterrorism Center and Civil Liberties Protections

SEC. 1021. NATIONAL COUNTERTERRORISM CENTER.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section:

"NATIONAL COUNTERTERRORISM CENTER

"SEC. 119. (a) ESTABLISHMENT OF CENTER.—There is within the Office of the National Intelligence Director a National Counterterrorism Center.

"(b) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—There is a Director of the National Counterterrorism Center, who shall be the head of the National Counterterrorism Center, who shall be appointed by National Intelligence Director.

"(c) SUPERVISION.—The Director of the National Counterterrorism Center shall report to the National Intelligence Director on—

"(1) the budget and programs of the National Counterterrorism Center;

"(2) the activities of the Directorate of Intelligence of the National Counterterrorism Center under subsection (h);

"(3) the conduct of intelligence operations implemented by other elements of the intelligence community; and

"(4) the planning and progress of joint counterterrorism operations (other than intelligence operations).

The National Intelligence Director shall carry out this section through the Deputy National Intelligence Director for Operations.

"(d) PRIMARY MISSIONS.—The primary missions of the National Counterterrorism Center shall be as follows:

"(1) To serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic counterterrorism.

"(2) To conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies.

"(3) To support operational responsibilities assigned to lead agencies for counterterrorism activities by ensuring that such agencies have access to and receive intelligence needed to accomplish their assigned activities.

"(4) To ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis.

"(e) DOMESTIC COUNTERTERRORISM INTELLIGENCE.—(1) The Center may, consistent with applicable law, the direction of the President, and the guidelines referred to in section 102A(b), receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence.

"(2) Any agency authorized to conduct counterterrorism activities may request information from the Center to assist it in its responsibilities, consistent with applicable law and the guidelines referred to in section 102A(b).

"(f) DUTIES AND RESPONSIBILITIES OF DIRECTOR.—The Director of the National Counterterrorism Center shall—

"(1) serve as the principal adviser to the National Intelligence Director on intelligence operations relating to counterterrorism;

"(2) provide strategic guidance and plans for the civilian and military counterterrorism efforts of the United States Government and for the effective integration of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States;

"(3) advise the National Intelligence Director on the extent to which the counterterrorism program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the priorities established by the President;

"(4) disseminate terrorism information, including current terrorism threat analysis, to the President, the Vice President, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of the Central Intelligence Agency, and other officials of the executive branch as appropriate, and to the appropriate committees of Congress;

"(5) support the Department of Justice and the Department of Homeland Security, and other appropriate agencies, in fulfillment of their responsibilities to

disseminate terrorism information, consistent with applicable law, guidelines referred to in section 102A(b), Executive Orders and other Presidential guidance, to State and local government officials, and other entities, and coordinate dissemination of terrorism information to foreign governments as approved by the National Intelligence Director;

"(6) consistent with priorities approved by the President, assist the National Intelligence Director in establishing requirements for the intelligence community for the collection of terrorism information; and

"(7) perform such other duties as the National Intelligence Director may prescribe or are prescribed by law.

"(g) LIMITATION.—The Director of the National Counterterrorism Center may not direct the execution of counterterrorism operations.

"(h) RESOLUTION OF DISPUTES.—The National Intelligence Director shall resolve disagreements between the National Counterterrorism Center and the head of a department, agency, or element of the United States Government on designations, assignments, plans, or responsibilities. The head of such a department, agency, or element may appeal the resolution of the disagreement by the National Intelligence Director to the President.

"(i) DIRECTORATE OF INTELLIGENCE.—The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Intelligence which shall have primary responsibility within the United States Government for analysis of terrorism and terrorist organizations (except for purely domestic terrorism and domestic terrorist organizations) from all sources of intelligence, whether collected inside or outside the United States.

"(j) DIRECTORATE OF STRATEGIC PLANNING.—The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Strategic Planning which shall provide strategic guidance and plans for counterterrorism operations conducted by the United States Government.".

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 118 the following new item:

"Sec. 119. National Counterterrorism Center.".

SEC. 1022. CIVIL LIBERTIES PROTECTION OFFICER.

(a) CIVIL LIBERTIES PROTECTION OFFICER.—(1) Within the Office of the National Intelligence Director, there is a Civil Liberties Protection Officer who shall be appointed by the National Intelligence Director.

(2) The Civil Liberties Protection Officer shall report directly to the National Intelligence Director.

(b) DUTIES.—The Civil Liberties Protection Officer shall—

(1) ensure that the protection of civil liberties and privacy is appropriately incorporated in the policies and procedures developed for and implemented by the Office of the National Intelligence Director and the elements of the intelligence community within the National Intelligence Program;

(2) oversee compliance by the Office and the National Intelligence Director with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil liberties and privacy;

(3) review and assess complaints and other information indicating possible abuses of civil liberties and privacy in the administration of the programs and operations of the Office and the National Intelligence Director and, as appropriate, investigate any such complaint or information;

(4) ensure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(5) ensure that personal information contained in a system of records subject to section 552a of title 5, United States Code (popularly referred to as the 'Privacy Act'), is handled in full compliance with fair information practices as set out in that section;

(6) conduct privacy impact assessments when appropriate or as required by law; and

(7) perform such other duties as may be prescribed by the National Intelligence Director or specified by law.

(c) USE OF AGENCY INSPECTORS GENERAL.—When appropriate, the Civil Liberties Protection Officer may refer complaints to the Office of Inspector General having responsibility for the affected element of the department or agency of the intelligence community to conduct an investigation under paragraph (3) of subsection (b).

Subtitle C—Joint Intelligence Community Council

SEC. 1031. JOINT INTELLIGENCE COMMUNITY COUNCIL.

(a) ESTABLISHMENT.—(1) There is hereby established a Joint Intelligence Community Council.

(b) FUNCTIONS.—(1) The Joint Intelligence Community Council shall provide advice to the National Intelligence Director as appropriate.

(2) The National Intelligence Director shall consult with the Joint Intelligence Community Council in developing guidance for the development of the annual National Intelligence Program budget.

(c) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:

(1) The National Intelligence Director, who shall chair the Council.
(2) The Secretary of State.
(3) The Secretary of the Treasury.
(4) The Secretary of Defense.
(5) The Attorney General.
(6) The Secretary of Energy.
(7) The Secretary of Homeland Security.
(8) Such other officials of the executive branch as the President may designate.

Subtitle D—Improvement of Human Intelligence (HUMINT)

SEC. 1041. HUMAN INTELLIGENCE AS AN INCREASINGLY CRITICAL COMPONENT OF THE INTELLIGENCE COMMUNITY.

It is a sense of Congress that—

(1) the human intelligence officers of the intelligence community have performed admirably and honorably in the face of great personal dangers;

(2) during an extended period of unprecedented investment and improvements in technical collection means, the human intelligence capabilities of the United States have not received the necessary and commensurate priorities;

(3) human intelligence is becoming an increasingly important capability to provide information on the asymmetric threats to the national security of the United States;

(4) the continued development and improvement of a robust and empowered and flexible human intelligence work force is critical to identifying, understanding, and countering the plans and intentions of the adversaries of the United States; and

(5) an increased emphasis on, and resources applied to, enhancing the depth and breadth of human intelligence capabilities of the United States intelligence community must be among the top priorities of the National Intelligence Director.

SEC. 1042. IMPROVEMENT OF HUMAN INTELLIGENCE CAPACITY.

Not later than 6 months after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress a report on existing human intelligence (HUMINT) capacity which shall include a plan to implement changes, as necessary, to accelerate improvements to, and increase the capacity of, HUMINT across the intelligence community.

Subtitle E—Improvement of Education for the Intelligence Community

SEC. 1051. MODIFICATION OF OBLIGATED SERVICE REQUIREMENTS UNDER NATIONAL SECURITY EDUCATION PROGRAM.

(a) IN GENERAL.—(1) Subsection (b)(2) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended to read as follows:

"(2) will meet the requirements for obligated service described in subsection (j); and".

(2) Such section is further amended by adding at the end the following new subsection:

"(j) REQUIREMENTS FOR OBLIGATED SERVICE IN THE GOVERNMENT.—(1) Each recipient of a scholarship or a fellowship under the program shall work in a specified national security position. In this subsection, the term 'specified national security position' means a position of a department or agency of the United States that the Secretary certifies is appropriate to use the unique language and region expertise acquired by the recipient pursuant to the study for which scholarship or fellowship assistance (as the case may be) was provided under the program.

"(2) Each such recipient shall commence work in a specified national security position as soon as practicable but in no case later than two years after the completion by the recipient of the study for which scholarship or fellowship assistance (as the case may be) was provided under the program.

"(3) Each such recipient shall work in a specified national security position for a period specified by the Secretary, which period shall include—

"(A) in the case of a recipient of a scholarship, one year of service for each year, or portion thereof, for which such scholarship assistance was provided, and

"(B) in the case of a recipient of a fellowship, not less than one nor more than three years for each year, or portion thereof, for which such fellowship assistance was provided.

"(4) Recipients shall seek specified national security positions as follows:

"(A) In the Department of Defense or in any element of the intelligence community.

"(B) In the Department of State or in the Department of Homeland Security, if the recipient demonstrates to the Secretary that no position is available in the Department of Defense or in any element of the intelligence community.

"(C) In any other Federal department or agency not referred to in subparagraphs (A) and (B), if the recipient demonstrates to the Secretary that no position is available in a Federal department or agency specified in such paragraphs.".

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (j) of section 802 of the David L. Boren National Security Education Act of 1991, as added by subsection (a). In prescribing such regulations, the Secretary shall establish standards that recipients of scholarship and fellowship assistance under the program under section 802 of the David L. Boren National Security Education Act of 1991 are required to demonstrate in order to satisfy the requirement of a good faith effort to gain employment as required under such subsection.

(c) APPLICABILITY.—(1) The amendments made by subsection (a) shall apply with respect to service agreements entered into under the David L. Boren National Security Education Act of 1991 on or after the date of the enactment of this Act.

(2) The amendments made by subsection (a) shall not affect the force, validity, or terms of any service agreement entered into under the David L. Boren National Security Education Act of 1991 before the date of the enactment of this Act that is in force as of that date.

SEC. 1052. IMPROVEMENTS TO THE NATIONAL FLAGSHIP LANGUAGE INITIATIVE.

(a) INCREASE IN ANNUAL AUTHORIZATION OF APPROPRIATIONS.—(1) Title VIII of the Intelligence Authorization Act for Fiscal Year 1992 (Public Law 102–183; 105 Stat. 1271), as amended by section 311(c) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103–178; 107 Stat. 2037) and by section 333(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2397), is amended in subsection (a) of section 811 by striking "there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, $10,000,000," and inserting "there is authorized to be appropriated to the Secretary for each of fiscal years 2003 and 2004, $10,000,000, and for fiscal year 2005 and each subsequent fiscal year, $12,000,000,".

(2) Subsection (b) of such section is amended by inserting "for fiscal years 2003 and 2004 only" after "authorization of appropriations under subsection (a)".

(b) REQUIREMENT FOR EMPLOYMENT AGREEMENTS.—(1) Section 802(i) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902(i)) is amended by adding at the end the following new paragraph:

"(5)(A) In the case of an undergraduate or graduate student that participates in training in programs under paragraph (1), the student shall enter into an agreement described in subsection (b), other than such a student who has entered into such an agreement pursuant to subparagraph (A)(ii) or (B)(ii) of section 802(a)(1).

"(B) In the case of an employee of an agency or department of the Federal Government that participates in training in programs under paragraph (1), the employee shall agree in writing—

"(i) to continue in the service of the agency or department of the Federal Government employing the employee for the period of such training;

"(ii) to continue in the service of such agency or department employing the employee following completion of such training for a period of two years for each year, or part of the year, of such training;

"(iii) to reimburse the United States for the total cost of such training (excluding the employee's pay and allowances) provided to the employee if, before the completion by the employee of the training, the employment of the employee by the agency or department is terminated due to misconduct by the employee or by the employee voluntarily; and

"(iv) to reimburse the United States if, after completing such training, the employment of the employee by the agency or department is terminated either by the agency or department due to misconduct by the employee or by the employee voluntarily, before the completion by the employee of the period of service required in clause (ii), in an amount that bears the same ratio to the total cost of the training (excluding the employee's pay and allowances) provided to the employee as the unserved portion of such period of service bears to the total period of service under clause (ii).

"(C) Subject to subparagraph (D), the obligation to reimburse the United States under an agreement under subparagraph (A) is for all purposes a debt owing the United States.

"(D) The head of an element of the intelligence community may release an employee, in whole or in part, from the obligation to reimburse the United States under an agreement under subparagraph (A) when, in the discretion of the head of the element, the head of the element determines that equity or the interests of the United States so require.".

(2) The amendment made by paragraph (1) shall apply to training that begins on or after the date that is 90 days after the date of the enactment of this Act.

(c) INCREASE IN THE NUMBER OF PARTICIPATING EDUCATIONAL INSTITUTIONS.—The Secretary of Defense shall take such steps as the Secretary determines will increase the number of qualified educational institutions that receive grants under the National Flagship Language Initiative to establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

(d) CLARIFICATION OF AUTHORITY TO SUPPORT STUDIES ABROAD.—Educational institutions that receive grants under the National Flagship Language Initiative may support students who pursue total immersion foreign language studies overseas of foreign languages that are critical to the national security of the United States.

SEC. 1053. ESTABLISHMENT OF SCHOLARSHIP PROGRAM FOR ENGLISH LANGUAGE STUDIES FOR HERITAGE COMMUNITY CITIZENS OF THE UNITED STATES WITHIN THE NATIONAL SECURITY EDUCATION PROGRAM.

(a) SCHOLARSHIP PROGRAM FOR ENGLISH LANGUAGE STUDIES FOR HERITAGE COMMUNITY CITIZENS OF THE UNITED STATES.—(1) Subsection (a)(1) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(A) by striking "and" at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(E) awarding scholarships to students who—

"(i) are United States citizens who—

"(I) are native speakers (commonly referred to as heritage community residents) of a foreign language that is identified as critical to the national security interests of the United States who should be actively recruited for employment by Federal security agencies with a need for linguists; and

"(II) are not proficient at a professional level in the English language with respect to reading, writing, and interpersonal skills required to carry out the national security interests of the United States, as determined by the Secretary,

to enable such students to pursue English language studies at an institution of higher education of the United States to attain proficiency in those skills; and

"(ii) enter into an agreement to work in a national security position or work in the field of education in the area of study for which the scholarship was awarded in a similar manner (as determined by the Secretary) as agreements entered into pursuant to subsection (b)(2)(A).".

(2) The matter following subsection (a)(2) of such section is amended—

(A) in the first sentence, by inserting "or for the scholarship program under paragraph (1)(E)" after "under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i)"; and

(B) by adding at the end the following: "For the authorization of appropriations for the scholarship program under paragraph (1)(E), see section 812.".

(3) Section 803(d)(4)(E) of such Act (50 U.S.C. 1903(d)(4)(E)) is amended by inserting before the period the following: "and section 802(a)(1)(E) (relating to scholarship programs for advanced English language studies by heritage community residents)".

(b) FUNDING.—The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

"SEC. 812. FUNDING FOR SCHOLARSHIP PROGRAM FOR CERTAIN HERITAGE COMMUNITY RESIDENTS.

"There is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2005, $4,000,000, to carry out the scholarship programs for English language studies by certain heritage community residents under section 802(a)(1)(E).

SEC. 1054. SENSE OF CONGRESS WITH RESPECT TO LANGUAGE AND EDUCATION FOR THE INTELLIGENCE COMMUNITY; REPORTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that there should be within the Office of the National Intelligence Director a senior official responsible to assist the National Intelligence Director in carrying out the Director's responsibilities for establishing policies and procedure for foreign language education and training of the intelligence community. The duties of such official should include the following:

(1) Overseeing and coordinating requirements for foreign language education and training of the intelligence community.

(2) Establishing policy, standards, and priorities relating to such requirements.

(3) Identifying languages that are critical to the capability of the intelligence community to carry out national security activities of the United States.

(4) Monitoring the allocation of resources for foreign language education and training in order to ensure the requirements of the intelligence community with respect to foreign language proficiency are met.

(b) REPORTS.—Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress the following reports:

(1) A report that identifies—

(A) skills and processes involved in learning a foreign language; and

(B) characteristics and teaching techniques that are most effective in teaching foreign languages.

(2)(A) A report that identifies foreign language heritage communities, particularly such communities that include speakers of languages that are critical to the national security of the United States.

(B) For purposes of subparagraph (A), the term "foreign language heritage community" means a community of residents or citizens of the United States—

(i) who are native speakers of, or who have fluency in, a foreign language; and

(ii) who should be actively recruited for employment by Federal security agencies with a need for linguists.

(3) A report on—

(A) the estimated cost of establishing a program under which the heads of elements of the intelligence community agree to repay employees of the intelligence community for any student loan taken out by that employee for the study of foreign languages critical for the national security of the United States; and

(B) the effectiveness of such a program in recruiting and retaining highly qualified personnel in the intelligence community.

SEC. 1055. ADVANCEMENT OF FOREIGN LANGUAGES CRITICAL TO THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title X of the National Security Act of 1947 (50 U.S.C.) is amended—

(1) by inserting before section 1001 (50 U.S.C. 441g) the following:

"Subtitle A—Science and Technology";

and

(2) by adding at the end the following new subtitles:

"Subtitle B—Foreign Languages Program

"PROGRAM ON ADVANCEMENT OF FOREIGN LANGUAGES CRITICAL TO THE INTELLIGENCE COMMUNITY

"SEC. 1011. (a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense and the National Intelligence Director may jointly establish a program to advance foreign languages skills in languages that are critical to the capability of the intelligence community to carry out national security activities of the United States (hereinafter in this subtitle referred to as the 'Foreign Languages Program').

"(b) IDENTIFICATION OF REQUISITE ACTIONS.—In order to carry out the Foreign Languages Program, the Secretary of Defense and the National Intelligence Director shall jointly determine actions required to improve the education of personnel in the intelligence community in foreign languages that are critical to the capability of the intelligence community to carry out national security activities of the United States to meet the long-term intelligence needs of the United States.

"EDUCATION PARTNERSHIPS

"SEC. 1012. (a) IN GENERAL.—In carrying out the Foreign Languages Program, the head of a department or agency containing an element of an intelligence community entity may enter into one or more education partnership agreements with educational institutions in the United States in order to encourage and enhance the study of foreign languages that are critical to the capability of the intelligence community to carry out national security activities of the United States in educational institutions.

"(b) ASSISTANCE PROVIDED UNDER EDUCATIONAL PARTNERSHIP AGREEMENTS.—Under an educational partnership agreement entered into with an educational institution pursuant to this section, the head of an element of an intelligence community entity may provide the following assistance to the educational institution:

"(1) The loan of equipment and instructional materials of the element of the intelligence community entity to the educational institution for any purpose and duration that the head determines to be appropriate.

"(2) Notwithstanding any other provision of law relating to transfers of surplus property, the transfer to the educational institution of any computer equipment, or other equipment, that is—

"(A) commonly used by educational institutions;

"(B) surplus to the needs of the entity; and

"(C) determined by the head of the element to be appropriate for support of such agreement.

"(3) The provision of dedicated personnel to the educational institution—

"(A) to teach courses in foreign languages that are critical to the capability of the intelligence community to carry out national security activities of the United States; or

"(B) to assist in the development of such courses and materials for the institution.

"(4) The involvement of faculty and students of the educational institution in research projects of the element of the intelligence community entity.

"(5) Cooperation with the educational institution in developing a program under which students receive academic credit at the educational institution for work on research projects of the element of the intelligence community entity.

"(6) The provision of academic and career advice and assistance to students of the educational institution.

"(7) The provision of cash awards and other items that the head of the element of the intelligence community entity determines to be appropriate.

"VOLUNTARY SERVICES

"SEC. 1013. (a) AUTHORITY TO ACCEPT SERVICES.—Notwithstanding section 1342 of title 31, United States Code, and subject to subsection (b), the Foreign Languages Program under section 1011 shall include authority for the head of an element of an intelligence community entity to accept from any individual who is dedicated personnel (as defined in section 1016(3)) voluntary services in support of the activities authorized by this subtitle.

"(b) REQUIREMENTS AND LIMITATIONS.—(1) In accepting voluntary services from an individual under subsection (a), the head of the element shall—

"(A) supervise the individual to the same extent as the head of the element would supervise a compensated employee of that element providing similar services; and

"(B) ensure that the individual is licensed, privileged, has appropriate educational or experiential credentials, or is otherwise qualified under applicable law or regulations to provide such services.

"(2) In accepting voluntary services from an individual under subsection (a), the head of an element of the intelligence community entity may not—

"(A) place the individual in a policymaking position, or other position performing inherently government functions; or

"(B) compensate the individual for the provision of such services.

"(c) AUTHORITY TO RECRUIT AND TRAIN INDIVIDUALS PROVIDING SERVICES.—The head of an element of an intelligence community entity may recruit and train individuals to provide voluntary services accepted under subsection (a).

"(d) STATUS OF INDIVIDUALS PROVIDING SERVICES.—(1) Subject to paragraph (2), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), an individual shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

"(A) Section 552a of title 5, United States Code (relating to maintenance of records on individuals).

"(B) Chapter 11 of title 18, United States Code (relating to conflicts of interest).

"(2)(A) With respect to voluntary services accepted under paragraph (1) provided by an individual that are within the scope of the services so accepted, the individual is deemed to be a volunteer of a governmental entity or nonprofit institution for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

"(B) In the case of any claim against such an individual with respect to the provision of such services, section 4(d) of such Act (42 U.S.C. 14503(d)) shall not apply.

"(3) Acceptance of voluntary services under this section shall have no bearing on the issuance or renewal of a security clearance.

"(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—(1) The head of an element of the intelligence community entity may reimburse an individual for incidental expenses incurred by the individual in providing voluntary services accepted under subsection (a). The head of an element of the intelligence community entity shall determine which expenses are eligible for reimbursement under this subsection.

"(2) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

"(f) AUTHORITY TO INSTALL EQUIPMENT.—(1) The head of an element of the intelligence community may install telephone lines and any necessary telecommunication equipment in the private residences of individuals who provide voluntary services accepted under subsection (a).

"(2) The head of an element of the intelligence community may pay the charges incurred for the use of equipment installed under paragraph (1) for authorized purposes.

"(3) Notwithstanding section 1348 of title 31, United States Code, the head of an element of the intelligence community entity may use appropriated funds or nonappropriated funds of the element in carrying out this subsection.

"REGULATIONS

"SEC. 1014. (a) IN GENERAL.—The Secretary of Defense and the National Intelligence Director jointly shall promulgate regulations necessary to carry out the Foreign Languages Program authorized under this subtitle.

"(b) ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Each head of an element of an intelligence community entity shall prescribe regulations to carry out sections 1012 and 1013 with respect to that element including the following:

"(1) Procedures to be utilized for the acceptance of voluntary services under section 1013.

"(2) Procedures and requirements relating to the installation of equipment under section 1013(g).

"DEFINITIONS

"SEC. 1015. In this subtitle:

"(1) The term 'intelligence community entity' means an agency, office, bureau, or element referred to in subparagraphs (B) through (K) of section 3(4).

"(2) The term 'educational institution' means—

"(A) a local educational agency (as that term is defined in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26))),

"(B) an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) other than institutions referred to in subsection (a)(1)(C) of such section), or

"(C) any other nonprofit institution that provides instruction of foreign languages in languages that are critical to the capability of the intelligence community to carry out national security activities of the United States.

"(3) The term 'dedicated personnel' means employees of the intelligence community and private citizens (including former civilian employees of the Federal Government who have been voluntarily separated, and members of the United States Armed Forces who have been honorably discharged or generally discharged under honorable circumstances, and rehired on a voluntary basis specifically to perform the activities authorized under this subtitle).

"Subtitle C—Additional Education Provisions

"ASSIGNMENT OF INTELLIGENCE COMMUNITY PERSONNEL AS LANGUAGE STUDENTS

"SEC. 1021. (a) IN GENERAL.—(1) The National Intelligence Director, acting through the heads of the elements of the intelligence community, may provide for the assignment of military and civilian personnel described in paragraph (2) as students at accredited professional, technical, or other institutions of higher education for training at the graduate or undergraduate level in foreign languages required for the conduct of duties and responsibilities of such positions.

"(2) Personnel referred to in paragraph (1) are personnel of the elements of the intelligence community who serve in analysts positions in such elements and who require foreign language expertise required for the conduct of duties and responsibilities of such positions.

"(b) AUTHORITY FOR REIMBURSEMENT OF COSTS OF TUITION AND TRAINING.—(1) The Director may reimburse an employee assigned under subsection (a) for the total cost of the training described in subsection (a), including costs of educational and supplementary reading materials.

"(2) The authority under paragraph (1) shall apply to employees who are assigned on a full-time or part-time basis.

"(3) Reimbursement under paragraph (1) may be made from appropriated or non-appropriated funds.

"(c) RELATIONSHIP TO COMPENSATION AS AN ANALYST.—Reimbursement under this section to an employee who is an analyst is in addition to any benefits, allowances, travels, or other compensation the employee is entitled to by reason of serving in such an analyst position.".

(b) CLERICAL AMENDMENT.—The table of contents for the National Security Act of 1947 is amended by striking the item relating to section 1001 and inserting the following new items:

"Subtitle A—Science and Technology

"Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

"Subtitle B—Foreign Languages Program

"Sec. 1011. Program on advancement of foreign languages critical to the intelligence community.
"Sec. 1012. Education partnerships.
"Sec. 1013. Voluntary services.
"Sec. 1014. Regulations.
"Sec. 1015. Definitions.

"Subtitle C—Additional Education Provisions

"Sec. 1021. Assignment of intelligence community personnel as language students.".

SEC. 1056. PILOT PROJECT FOR CIVILIAN LINGUIST RESERVE CORPS.

(a) PILOT PROJECT.—The National Intelligence Director shall conduct a pilot project to establish a Civilian Linguist Reserve Corps comprised of United States citizens with advanced levels of proficiency in foreign languages who would be available upon a call of the President to perform such service or duties with respect to such foreign languages in the Federal Government as the President may specify.

(b) CONDUCT OF PROJECT.—Taking into account the findings and recommendations contained in the report required under section 325 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2393), in conducting the pilot project under subsection (a) the National Intelligence Director shall—

(1) identify several foreign languages that are critical for the national security of the United States;

(2) identify United States citizens with advanced levels of proficiency in those foreign languages who would be available to perform the services and duties referred to in subsection (a); and

(3) implement a call for the performance of such services and duties.

(c) DURATION OF PROJECT.—The pilot project under subsection (a) shall be conducted for a three-year period.

(d) AUTHORITY TO ENTER INTO CONTRACTS.—The National Intelligence Director may enter into contracts with appropriate agencies or entities to carry out the pilot project under subsection (a).

(e) REPORTS.—(1) The National Intelligence Director shall submit to Congress an initial and a final report on the pilot project conducted under subsection (a).

(2) Each report required under paragraph (1) shall contain information on the operation of the pilot project, the success of the pilot project in carrying out the objectives of the establishment of a Civilian Linguist Reserve Corps, and recommendations for the continuation or expansion of the pilot project.

(3) The final report shall be submitted not later than 6 months after the completion of the project.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Intelligence Director such sums as are necessary for each of fiscal years 2005, 2006, and 2007 in order to carry out the pilot project under subsection (a).

SEC. 1057. CODIFICATION OF ESTABLISHMENT OF THE NATIONAL VIRTUAL TRANSLATION CENTER.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 1021(a), is further amended by adding at the end the following new section:

"NATIONAL VIRTUAL TRANSLATION CENTER

"SEC. 120. (a) IN GENERAL.—There is an element of the intelligence community known as the National Virtual Translation Center under the direction of the National Intelligence Director.

"(b) FUNCTION.—The National Virtual Translation Center shall provide for timely and accurate translations of foreign intelligence for all other elements of the intelligence community.

"(c) FACILITATING ACCESS TO TRANSLATIONS.—In order to minimize the need for a central facility for the National Virtual Translation Center, the Center shall—

"(1) use state-of-the-art communications technology;

"(2) integrate existing translation capabilities in the intelligence community; and

"(3) use remote-connection capacities.

"(d) USE OF SECURE FACILITIES.—Personnel of the National Virtual Translation Center may carry out duties of the Center at any location that—

"(1) has been certified as a secure facility by an agency or department of the United States; and

"(2) the National Intelligence Director determines to be appropriate for such purpose.".

(b) CLERICAL AMENDMENT.—The table of sections for that Act, as amended by section 1021(b), is further amended by inserting after the item relating to section 119 the following new item:

"Sec. 120. National Virtual Translation Center.".

SEC. 1058. REPORT ON RECRUITMENT AND RETENTION OF QUALIFIED INSTRUCTORS OF THE DEFENSE LANGUAGE INSTITUTE.

(a) STUDY.—The Secretary of Defense shall conduct a study on methods to improve the recruitment and retention of qualified foreign language instructors at the Foreign Language Center of the Defense Language Institute. In conducting the study, the Secretary shall consider, in the case of a foreign language instructor who is an alien, to expeditiously adjust the status of the alien from a temporary status to that of an alien lawfully admitted for permanent residence.

(b) REPORT.—(1) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the study conducted under subsection (a), and shall include in that report recommendations for such changes in legislation and regulation as the Secretary determines to be appropriate.

(2) DEFINITION.—In this subsection, the term "appropriate congressional committees" means the following:

(A) The Select Committee on Intelligence and the Committee on Armed Services of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

Subtitle F—Additional Improvements of Intelligence Activities

SEC. 1061. PERMANENT EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION INCENTIVE PROGRAM.

(a) EXTENSION OF PROGRAM.—Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(b) TERMINATION OF FUNDS REMITTANCE REQUIREMENT.—(1) Section 2 of such Act (50 U.S.C. 403–4 note) is further amended by striking subsection (i).

(2) Section 4(a)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note) is amended by striking ", or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104)".

SEC. 1062. NATIONAL SECURITY AGENCY EMERGING TECHNOLOGIES PANEL.

The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end the following new section:

"SEC. 19. (a) There is established the National Security Agency Emerging Technologies Panel. The panel is a standing panel of the National Security Agency. The panel shall be appointed by, and shall report directly to, the Director.

"(b) The National Security Agency Emerging Technologies Panel shall study and assess, and periodically advise the Director on, the research, development, and application of existing and emerging science and technology advances, advances on encryption, and other topics.

"(c) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the National Security Agency Emerging Technologies Panel.".

Subtitle G—Conforming and Other Amendments

SEC. 1071. CONFORMING AMENDMENTS RELATING TO ROLES OF NATIONAL INTELLIGENCE DIRECTOR AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

(a) NATIONAL SECURITY ACT OF 1947.—(1) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 3(5)(B) (50 U.S.C. 401a(5)(B)).
(B) Section 101(h)(2)(A) (50 U.S.C. 402(h)(2)(A)).
(C) Section 101(h)(5) (50 U.S.C. 402(h)(5)).
(D) Section 101(i)(2)(A) (50 U.S.C. 402(i)(2)(A)).
(E) Section 101(j) (50 U.S.C. 402(j)).
(F) Section 105(a) (50 U.S.C. 403–5(a)).
(G) Section 105(b)(6)(A) (50 U.S.C. 403–5(b)(6)(A)).
(H) Section 105B(a)(1) (50 U.S.C. 403–5b(a)(1)).
(I) Section 105B(b) (50 U.S.C. 403–5b(b)), the first place it appears.
(J) Section 110(b) (50 U.S.C. 404e(b)).
(K) Section 110(c) (50 U.S.C. 404e(c)).
(L) Section 112(a)(1) (50 U.S.C. 404g(a)(1)).
(M) Section 112(d)(1) (50 U.S.C. 404g(d)(1)).
(N) Section 113(b)(2)(A) (50 U.S.C. 404h(b)(2)(A)).
(O) Section 114(a)(1) (50 U.S.C. 404i(a)(1)).
(P) Section 114(b)(1) (50 U.S.C. 404i(b)(1)).
(R) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).
(S) Section 115(b) (50 U.S.C. 404j(b)).
(T) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).
(U) Section 116(a) (50 U.S.C. 404k(a)).
(V) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).
(W) Section 303(a) (50 U.S.C. 405(a)), both places it appears.
(X) Section 501(d) (50 U.S.C. 413(d)).
(Y) Section 502(a) (50 U.S.C. 413a(a)).
(Z) Section 502(c) (50 U.S.C. 413a(c)).
(AA) Section 503(b) (50 U.S.C. 413b(b)).
(BB) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).
(CC) Section 504(d)(2) (50 U.S.C. 414(d)(2)).
(DD) Section 506A(a)(1) (50 U.S.C. 415a–1(a)(1)).

(EE) Section 603(a) (50 U.S.C. 423(a)).
(FF) Section 702(a)(1) (50 U.S.C. 432(a)(1)).
(GG) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).
(HH) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.
(II) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).
(JJ) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).
(KK) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.
(LL) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).
(MM) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).
(NN) Section 704(g)(1)) (50 U.S.C. 432b(g)(1)), both places it appears.
(OO) Section 1001(a) (50 U.S.C. 441g(a)).
(PP) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).
(QQ) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).
(RR) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).
(SS) Section 1102(d) (50 U.S.C. 442a(d)).

(2) That Act is further amended by striking "of Central Intelligence" each place it appears in the following provisions:
(A) Section 105(a)(2) (50 U.S.C. 403–5(a)(2)).
(B) Section 105B(a)(2) (50 U.S.C. 403–5b(a)(2)).
(C) Section 105B(b) (50 U.S.C. 403–5b(b)), the second place it appears.

(3) That Act is further amended by striking "Director" each place it appears in the following provisions and inserting "National Intelligence Director":
(A) Section 114(c) (50 U.S.C. 404i(c)).
(B) Section 116(b) (50 U.S.C. 404k(b)).
(C) Section 1001(b) (50 U.S.C. 441g(b)).
(C) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.
(D) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).
(E) Section 1001(e) (50 U.S.C. 441g(e)), the first place it appears.

(4) Section 114A of that Act (50 U.S.C. 404i–1) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director, the Director of the Central Intelligence Agency"

(5) Section 504(a)(2) of that Act (50 U.S.C. 414(a)(2)) is amended by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency".

(6) Section 701 of that Act (50 U.S.C. 431) is amended—
(A) in subsection (a), by striking "Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence" and inserting "The Director of the Central Intelligence Agency, with the coordination of the National Intelligence Director, may exempt operational files of the Central Intelligence Agency"; and
(B) in subsection (g)(1), by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency and the National Intelligence Director".

(7) The heading for section 114 of that Act (50 U.S.C. 404i) is amended to read as follows:

"ADDITIONAL ANNUAL REPORTS FROM THE NATIONAL INTELLIGENCE DIRECTOR".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":
(A) Section 6 (50 U.S.C. 403g).
(B) Section 17(f) (50 U.S.C. 403q(f)), both places it appears.

(2) That Act is further amended by striking "of Central Intelligence" in each of the following provisions:
(A) Section 2 (50 U.S.C. 403b).
(A) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).
(B) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).
(C) Section 20(c) (50 U.S.C. 403t(c)).

(3) That Act is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "Director of the Central Intelligence Agency":
(A) Section 14(b) (50 U.S.C. 403n(b)).
(B) Section 16(b)(2) (50 U.S.C. 403p(b)(2)).
(C) Section 16(b)(3) (50 U.S.C. 403p(b)(3)), both places it appears.
(D) Section 21(g)(1) (50 U.S.C. 403u(g)(1)).
(E) Section 21(g)(2) (50 U.S.C. 403u(g)(2)).

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 101 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2001) is amended by striking paragraph (2) and inserting the following new paragraph (2):

"(2) DIRECTOR.—The term 'Director' means the Director of the Central Intelligence Agency.".

(d) CIA VOLUNTARY SEPARATION PAY ACT.—Subsection (a)(1) of section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 2001 note) is amended to read as follows:

"(1) the term 'Director' means the Director of the Central Intelligence Agency;".

(e) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking "Director of Central Intelligence" each place it appears and inserting "National Intelligence Director".

(f) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 9(a) of the Classified Information Procedures Act (5 U.S.C. App.) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(g) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 103–359.—Section 811(c)(6)(C) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(2) PUBLIC LAW 107–306.—(A) The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community," each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 313(a) (50 U.S.C. 404n(a)).

(ii) Section 343(a)(1) (50 U.S.C. 404n–2(a)(1))

(B) That Act is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 902(a)(2) (50 U.S.C. 402b(a)(2)).

(ii) Section 904(e)(4) (50 U.S.C. 402c(e)(4)).

(iii) Section 904(e)(5) (50 U.S.C. 402c(e)(5)).

(iv) Section 904(h) (50 U.S.C. 402c(h)), each place it appears.

(v) Section 904(m) (50 U.S.C. 402c(m)).

(C) Section 341 of that Act (50 U.S.C. 404n–1) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency" and inserting "National Intelligence Director shall establish within the Central Intelligence Agency".

(D) Section 352(b) of that Act (50 U.S.C. 404–3 note) is amended by striking "Director" and inserting "National Intelligence Director".

(3) PUBLIC LAW 108–177.—(A) The Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 317(a) (50 U.S.C. 403–3 note).

(ii) Section 317(h)(1).

(iii) Section 318(a) (50 U.S.C. 441g note).

(iv) Section 319(b) (50 U.S.C. 403 note).

(v) Section 341(b) (28 U.S.C. 519 note).

(vi) Section 357(a) (50 U.S.C. 403 note).

(vii) Section 504(a) (117 Stat. 2634), both places it appears.

(B) Section 319(f)(2) of that Act (50 U.S.C. 403 note) is amended by striking "Director" the first place it appears and inserting "National Intelligence Director".

(C) Section 404 of that Act (18 U.S.C. 4124 note) is amended by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency".

SEC. 1072. OTHER CONFORMING AMENDMENTS

(a) NATIONAL SECURITY ACT OF 1947.—(1) Section 101(j) of the National Security Act of 1947 (50 U.S.C. 402(j)) is amended by striking "Deputy Director of Central Intelligence" and inserting "Deputy National Intelligence Director".

(2) Section 112(d)(1) of that Act (50 U.S.C. 404g(d)(1)) is amended by striking "section 103(c)(6) of this Act" and inserting "section 102A(g) of this Act".

(3) Section 116(b) of that Act (50 U.S.C. 404k(b)) is amended by striking "to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Direc-

tor for Operations" and inserting "to the Deputy National Intelligence Director, or with respect to employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency".

(4) Section 506A(b)(1) of that Act (50 U.S.C. 415a–1(b)(1)) is amended by striking "Office of the Deputy Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(5) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking "Office of the Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(6) Section 1001(b) of that Act (50 U.S.C. 441g(b)) is amended by striking "Assistant Director of Central Intelligence for Administration" and inserting "Office of the National Intelligence Director".

(b) CENTRAL INTELLIGENCE ACT OF 1949.—Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended by striking "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))" and inserting "section 102A(g) of the National Security Act of 1947".

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)) is amended by striking "paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c)) that the Director of Central Intelligence" and inserting "section 102A(g) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(1)) that the National Intelligence Director".

(d) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 107–306.—(A) Section 343(c) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 404n–2(c)) is amended by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3((c)(6))" and inserting "section 102A(g) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(1))".

(B) Section 904 of that Act (50 U.S.C. 402c) is amended—

(i) in subsection (c), by striking "Office of the Director of Central Intelligence" and inserting "Office of the National Intelligence Director"; and

(ii) in subsection (l), by striking "Office of the Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(2) PUBLIC LAW 108–177.—Section 317 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403–3 note) is amended—

(A) in subsection (g), by striking "Assistant Director of Central Intelligence for Analysis and Production" and inserting "Deputy National Intelligence Director"; and

(B) in subsection (h)(2)(C), by striking "Assistant Director" and inserting "Deputy National Intelligence Director".

SEC. 1073. ELEMENTS OF INTELLIGENCE COMMUNITY UNDER NATIONAL SECURITY ACT OF 1947.

Paragraph (4) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

"(4) The term 'intelligence community' includes the following:

"(A) The Office of the National Intelligence Director.

"(B) The Central Intelligence Agency.

"(C) The National Security Agency.

"(D) The Defense Intelligence Agency.

"(E) The National Geospatial-Intelligence Agency.

"(F) The National Reconnaissance Office.

"(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

"(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

"(I) The Bureau of Intelligence and Research of the Department of State.

"(J) The Office of Intelligence and Analysis of the Department of the Treasury.

"(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

"(L) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.".

SEC. 1074. REDESIGNATION OF NATIONAL FOREIGN INTELLIGENCE PROGRAM AS NATIONAL INTELLIGENCE PROGRAM.

(a) REDESIGNATION.—Paragraph (6) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by striking "Foreign".

(b) CONFORMING AMENDMENTS.—(1) Section 506(a) of the National Security Act of 1947 (50 U.S.C. 415a(a)) is amended by striking "National Foreign Intelligence Program" and inserting "National Intelligence Program".

(2) Section 17(f) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(f)) is amended by striking "National Foreign Intelligence Program" and inserting "National Intelligence Program".

(c) HEADING AMENDMENT.—The heading of section 506 of that Act is amended by striking "FOREIGN".

SEC. 1075. REPEAL OF SUPERSEDED AUTHORITIES.

(a) APPOINTMENT OF CERTAIN INTELLIGENCE OFFICIALS.—Section 106 of the National Security Act of 1947 (50 U.S.C. 403–6) is repealed.

(b) COLLECTION TASKING AUTHORITY.—Section 111 of the National Security Act of 1947 (50 U.S.C. 404f) is repealed.

SEC. 1076. CLERICAL AMENDMENTS TO NATIONAL SECURITY ACT OF 1947.

The table of contents for the National Security Act of 1947 is amended—

(1) by striking the items relating to sections 102 through 104 and inserting the following new items:

"Sec. 102. National Intelligence Director.
"Sec. 102A. Responsibilities and authorities of National Intelligence Director.
"Sec. 103. Office of the National Intelligence Director.
"Sec. 104. Central Intelligence Agency.
"Sec. 104A. Director of the Central Intelligence Agency."; and

(2) by striking the item relating to section 114 and inserting the following new item:

"Sec. 114. Additional annual reports from the National Intelligence Director.";

and

(3) by striking the item relating to section 506 and inserting the following new item:

"Sec. 506. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence".

SEC. 1077. CONFORMING AMENDMENTS RELATING TO PROHIBITING DUAL SERVICE OF THE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

Section 1 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a) is amended—

(1) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; and

(2) by striking paragraph (2), as so redesignated, and inserting the following new paragraph (2):

"(2) 'Director' means the Director of the Central Intelligence Agency; and".

SEC. 1078. ACCESS TO INSPECTOR GENERAL PROTECTIONS.

Section 17(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(a)(1)) is amended by inserting before the semicolon at the end the following: "and to programs and operations of the Office of the National Intelligence Director".

SEC. 1079. GENERAL REFERENCES.

(a) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF INTELLIGENCE COMMUNITY.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the National Intelligence Director.

(b) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF CIA.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(c) COMMUNITY MANAGEMENT STAFF.—Any reference to the Community Management Staff in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the staff of the Office of the National Intelligence Director.

SEC. 1080. APPLICATION OF OTHER LAWS.

(a) POLITICAL SERVICE OF PERSONNEL.—Section 7323(b)(2)(B)(i) of title 5, United States Code, is amended—

(1) in subclause (XII), by striking "or" at the end; and

(2) by inserting after subclause (XIII) the following new subclause:

"(XIV) the Office of the National Intelligence Director; or".

(b) DELETION OF INFORMATION ABOUT FOREIGN GIFTS.—Section 7342(f)(4) of title 5, United States Code, is amended—

(1) by inserting "(A)" after "(4)";

(2) in subparagraph (A), as so designated, by striking "the Director of Central Intelligence" and inserting "the Director of the Central Intelligence Agency"; and

(3) by adding at the end the following new subparagraph:

"(B) In transmitting such listings for the Office of the National Intelligence Director, the National Intelligence Director may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.".

(c) EXEMPTION FROM FINANCIAL DISCLOSURES.—Section 105(a)(1) of the Ethics in Government Act (5 U.S.C. App.) is amended by inserting "the Office of the National Intelligence Director," before "the Central Intelligence Agency".

Subtitle H—Transfer, Termination, Transition and Other Provisions

SEC. 1091. TRANSFER OF COMMUNITY MANAGEMENT STAFF.

(a) TRANSFER.—There shall be transferred to the Office of the National Intelligence Director the staff of the Community Management Staff as of the date of the enactment of this Act, including all functions and activities discharged by the Community Management Staff as of that date.

(b) ADMINISTRATION.—The National Intelligence Director shall administer the Community Management Staff after the date of the enactment of this Act as a component of the Office of the National Intelligence Director under section 103(b) of the National Security Act of 1947, as amended by section 1011(a).

SEC. 1092. TRANSFER OF TERRORIST THREAT INTEGRATION CENTER.

(a) TRANSFER.—There shall be transferred to the National Counterterrorism Center the Terrorist Threat Integration Center (TTIC), including all functions and activities discharged by the Terrorist Threat Integration Center as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The Director of the National Counterterrorism Center shall administer the Terrorist Threat Integration Center after the date of the enactment of this Act as a component of the Directorate of Intelligence of the National Counterterrorism Center under section 119(i) of the National Security Act of 1947, as added by section 1021(a).

SEC. 1093. TERMINATION OF POSITIONS OF ASSISTANT DIRECTORS OF CENTRAL INTELLIGENCE.

(a) TERMINATION.—The positions within the Central Intelligence Agency referred to in subsection (b) are hereby abolished.

(b) COVERED POSITIONS.—The positions within the Central Intelligence Agency referred to in this subsection are as follows:

(1) The Assistant Director of Central Intelligence for Collection.

(2) The Assistant Director of Central Intelligence for Analysis and Production.

(3) The Assistant Director of Central Intelligence for Administration.

SEC. 1094. IMPLEMENTATION PLAN.

(a) SUBMISSION OF PLAN.—The President shall transmit to Congress a plan for the implementation of this title and the amendments made by this title. The plan shall address, at a minimum, the following:

(1) The transfer of personnel, assets, and obligations to the National Intelligence Director pursuant to this title.

(2) Any consolidation, reorganization, or streamlining of activities transferred to the National Intelligence Director pursuant to this title.

(3) The establishment of offices within the Office of the National Intelligence Director to implement the duties and responsibilities of the National Intelligence Director as described in this title.

(4) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations to be transferred to the National Intelligence Director.

(5) Recommendations for additional legislative or administrative action as the Director considers appropriate.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the permanent location for the headquarters for the Office of the National Intelligence Director, should be at a location other than the George Bush Center for Intelligence in Langley, Virginia.

SEC. 1095. TRANSITIONAL AUTHORITIES.

Upon the request of the National Intelligence Director, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to the National Intelligence Director.

SEC. 1096. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise expressly provided in this Act, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) SPECIFIC EFFECTIVE DATES.—(1)(A) Not later than 60 days after the date of the enactment of this Act, the National Intelligence Director shall first appoint individuals to positions within the Office of the National Intelligence Director.

(B) Subparagraph (A) shall not apply with respect to the Deputy National Intelligence Director.

(2) Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress the implementation plan required under section 1904.

(3) Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall prescribe regulations, policies, procedures, standards, and guidelines required under section 102A of the National Security Act of 1947, as amended by section 1011(a).

TITLE II—TERRORISM PREVENTION AND PROSECUTION

Subtitle A—Individual Terrorists as Agents of Foreign Powers

SEC. 2001. PRESUMPTION THAT CERTAIN NON-UNITED STATES PERSONS ENGAGING IN INTERNATIONAL TERRORISM ARE AGENTS OF FOREIGN POWERS FOR PURPOSES OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) PRESUMPTION.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 101 the following new section:

"PRESUMPTION OF TREATMENT OF CERTAIN NON-UNITED STATES PERSONS ENGAGED IN INTERNATIONAL TERRORISM AS AGENTS OF FOREIGN POWERS

"SEC. 101A. Upon application by the Federal official applying for an order under this Act, the court may presume that a non-United States person who is knowingly engaged in sabotage or international terrorism, or activities that are in preparation therefor, is an agent of a foreign power under section 101(b)(2)(C).".

(2) The table of contents for that Act is amended by inserting after the item relating to section 101 the following new item:

"Sec. 101A. Presumption of treatment of certain non-United States persons engaged in international terrorism as agents of foreign powers.".

(b) SUNSET.—The amendments made by subsection (a) shall be subject to the sunset provision in section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295), including the exception provided in subsection (b) of such section 224.

Subtitle B—Stop Terrorist and Military Hoaxes Act of 2004

SEC. 2021. SHORT TITLE.

This subtitle may be cited as the "Stop Terrorist and Military Hoaxes Act of 2004".

SEC. 2022. HOAXES AND RECOVERY COSTS.

(a) PROHIBITION ON HOAXES.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1037 the following:

"§ 1038. False information and hoaxes

"(a) CRIMINAL VIOLATION.—

"(1) IN GENERAL.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 shall—

"(A) be fined under this title or imprisoned not more than 5 years, or both;

"(B) if serious bodily injury results, be fined under this title or imprisoned not more than 25 years, or both; and

"(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

"(2) ARMED FORCES.—Whoever, without lawful authority, makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged, shall—

"(A) be fined under this title or imprisoned not more than 5 years, or both;

"(B) if serious bodily injury results, be fined under this title or imprisoned not more than 25 years, or both; and

"(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

"(b) CIVIL ACTION.—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

"(c) REIMBURSEMENT.—

"(1) IN GENERAL.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not-for-profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

"(2) LIABILITY.—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

"(3) CIVIL JUDGMENT.—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

"(d) ACTIVITIES OF LAW ENFORCEMENT.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections as the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1037 the following:

"1038. False information and hoaxes.".

SEC. 2023. OBSTRUCTION OF JUSTICE AND FALSE STATEMENTS IN TERRORISM CASES.

(a) ENHANCED PENALTY.—Section 1001(a) and the third undesignated paragraph of section 1505 of title 18, United States Code, are amended by striking "be fined under this title or imprisoned not more than 5 years, or both" and inserting "be fined under this title, imprisoned not more than 5 years or, if the matter relates to international or domestic terrorism (as defined in section 2331), imprisoned not more than 10 years, or both".

(b) SENTENCING GUIDELINES.—Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a)

and 1505 of title 18, United States Code, if the offense involves a matter relating to international or domestic terrorism, as defined in section 2331 of such title.

SEC. 2024. CLARIFICATION OF DEFINITION.

Section 1958 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "facility in" and inserting "facility of"; and

(2) in subsection (b)(2), by inserting "or foreign" after "interstate".

Subtitle C—Material Support to Terrorism Prohibition Enhancement Act of 2004

SEC. 2041. SHORT TITLE.

This subtitle may be cited as the "Material Support to Terrorism Prohibition Enhancement Act of 2004".

SEC. 2042. RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.

Chapter 113B of title 18, United States Code, is amended by adding after section 2339C the following new section:

"§ 2339D. Receiving military-type training from a foreign terrorist organization

"(a) OFFENSE.—Whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act as a foreign terrorist organization shall be fined under this title or imprisoned for ten years, or both. To violate this subsection, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

"(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section. There is jurisdiction over an offense under subsection (a) if—

"(1) an offender is a national of the United States (as defined in 101(a)(22) of the Immigration and Nationality Act) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act);

"(2) an offender is a stateless person whose habitual residence is in the United States;

"(3) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

"(4) the offense occurs in whole or in part within the United States;

"(5) the offense occurs in or affects interstate or foreign commerce;

"(6) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'military-type training' includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction (as defined in section 2232a(c)(2));

"(2) the term 'serious bodily injury' has the meaning given that term in section 1365(h)(3);

"(3) the term 'critical infrastructure' means systems and assets vital to national defense, national security, economic security, public health or safety including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned; examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transportation systems and services (including highways, mass transit, airlines, and airports); and

"(4) the term 'foreign terrorist organization' means an organization designated as a terrorist organization under section 219(a)(1) of the Immigration and Nationality Act.".

SEC. 2043. PROVIDING MATERIAL SUPPORT TO TERRORISM.

(a) ADDITIONS TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORISTS.—Section 2339A(a) of title 18, United States Code, is amended—

(1) by designating the first sentence as paragraph (1);

(2) by designating the second sentence as paragraph (3);

(3) by inserting after paragraph (1) as so designated by this subsection the following:

"(2) (A) Whoever in a circumstance described in subparagraph (B) provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of international or domestic terrorism (as defined in section 2331), or in preparation for, or in carrying out, the concealment or escape from the commission of any such act, or attempts or conspires to do so, shall be punished as provided under paragraph (1) for an offense under that paragraph.

"(B) The circumstances referred to in subparagraph (A) are any of the following:

"(i) The offense occurs in or affects interstate or foreign commerce.

"(ii) The act of terrorism is an act of international or domestic terrorism that violates the criminal law of the United States.

"(iii) The act of terrorism is an act of domestic terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government.

"(iv) An offender, acting within the United States or outside the territorial jurisdiction of the United States, is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act, an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act , or a stateless person whose habitual residence is in the United States, and the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government.

"(v) An offender, acting within the United States, is an alien, and the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government.

"(vi) An offender, acting outside the territorial jurisdiction of the United States, is an alien and the act of terrorism is an act of international terrorism that appears to be intended to influence the policy of, or affect the conduct of, the Government of the United States.

"(vii) An offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under this paragraph or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under this paragraph."; and

(4) by inserting "act or" after "underlying".

(b) DEFINITIONS.—Section 2339A(b) of title 18, United States Code, is amended—

(1) by striking "In this" and inserting "(1) In this";

(2) by inserting "any property, tangible or intangible, or service, including" after "means";

(3) by inserting "(one or more individuals who may be or include oneself)" after "personnel";

(4) by inserting "and" before "transportation";

(5) by striking "and other physical assets"; and

(6) by adding at the end the following:

"(2) As used in this subsection, the term 'training' means instruction or teaching designed to impart a specific skill, as opposed to general knowledge, and the term 'expert advice or assistance' means advice or assistance derived from scientific, technical or other specialized knowledge.".

(c) ADDITION TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORIST ORGANIZATIONS.—Section 2339B(a)(1) of title 18, United States Code, is amended—

(1) by striking ", within the United States or subject to the jurisdiction of the United States," and inserting "in a circumstance described in paragraph (2)" ; and

(2) by adding at the end the following: "To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organiza-

tion (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act, or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989.".

(d) FEDERAL AUTHORITY.—Section 2339B(d) of title 18 is amended—

(1) by inserting "(1)" before "There"; and

(2) by adding at the end the following:

"(2) The circumstances referred to in paragraph (1) are any of the following:

"(A) An offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act.

"(B) An offender is a stateless person whose habitual residence is in the United States.

"(C) After the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States.

"(D) The offense occurs in whole or in part within the United States.

"(E) The offense occurs in or affects interstate or foreign commerce.

"(F) An offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).".

(e) DEFINITION.—Paragraph (4) of section 2339B(g) of title 18, United States Code, is amended to read as follows:

"(4) the term 'material support or resources' has the same meaning given that term in section 2339A;".

(f) ADDITIONAL PROVISIONS.—Section 2339B of title 18, United States Code, is amended by adding at the end the following:

"(h) PROVISION OF PERSONNEL.—No person may be prosecuted under this section in connection with the term 'personnel' unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with one or more individuals (who may be or include himself) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control.

"(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.".

SEC. 2044. FINANCING OF TERRORISM.

(a) FINANCING TERRORISM.—Section 2339c(c)(2) of title 18, United States Code, is amended—

(1) by striking ", resources, or funds" and inserting "or resources, or any funds or proceeds of such funds";

(2) in subparagraph (A), by striking "were provided" and inserting "are to be provided, or knowing that the support or resources were provided,"; and

(3) in subparagraph (B)—

(A) by striking "or any proceeds of such funds"; and

(B) by striking "were provided or collected" and inserting "are to be provided or collected, or knowing that the funds were provided or collected,".

(b) DEFINITIONS.—Section 2339c(e) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (12);

(2) by redesignating paragraph (13) as paragraph (14); and

(3) by inserting after paragraph (12) the following:

"(13) the term 'material support or resources' has the same meaning given that term in section 2339B(g)(4) of this title; and".

Subtitle D—Weapons of Mass Destruction Prohibition Improvement Act of 2004

SEC. 2051. SHORT TITLE.

This subtitle may be cited as the "Weapons of Mass Destruction Prohibition Improvement Act of 2004".

SEC. 2052. WEAPONS OF MASS DESTRUCTION.

(a) EXPANSION OF JURISDICTIONAL BASES AND SCOPE.—Section 2332a of title 18, United States Code, is amended—

(1) so that paragraph (2) of subsection (a) reads as follows:

"(2) against any person or property within the United States, and

"(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

"(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

"(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

"(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;";

(2) in paragraph (3) of subsection (a), by striking the comma at the end and inserting "; or";

(3) in subsection (a), by adding the following at the end:

"(4) against any property within the United States that is owned, leased, or used by a foreign government,";

(4) at the end of subsection (c)(1), by striking"and";

(5) in subsection (c)(2), by striking the period at the end and inserting "; and"; and

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

"(3) the term 'property' includes all real and personal property.".

(b) RESTORATION OF THE COVERAGE OF CHEMICAL WEAPONS.—Section 2332a of title 18, United States Code, as amended by subsection (a), is further amended—

(1) in the section heading, by striking "certain";

(2) in subsection (a), by striking "(other than a chemical weapon as that term is defined in section 229F)"; and

(3) in subsection (b), by striking "(other than a chemical weapon (as that term is defined in section 229F))".

(c) EXPANSION OF CATEGORIES OF RESTRICTED PERSONS SUBJECT TO PROHIBITIONS RELATING TO SELECT AGENTS.—Section 175b(d)(2) of title 18, United States Code, is amended—

(1) in subparagraph (G) by—

(A) inserting "(i)" after "(G)";

(B) inserting ", or (ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph" after "terrorism"; and

(C) striking "or" after the semicolon.

(2) in subparagraph (H) by striking the period and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)).".

(d) CONFORMING AMENDMENT TO REGULATIONS.—

(1) Section 175b(a)(1) of title 18, United States Code, is amended by striking "as a select agent in Appendix A" and all that follows and inserting the following: "as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations.".

(2) The amendment made by paragraph (1) shall take effect at the same time that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective.

(e) ENHANCING PROSECUTION OF WEAPONS OF MASS DESTRUCTION OFFENSES.—Section 1961(1)(B) of title 18, United States Code, is amended by adding at the end the following: "sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials),".

SEC. 2053. PARTICIPATION IN NUCLEAR AND WEAPONS OF MASS DESTRUCTION THREATS TO THE UNITED STATES.

(a) Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)) is amended by striking "in the production of any special nuclear material" and inserting "or participate in the development or production of any special nuclear material or atomic weapon".

(b) Title 18, United States Code, is amended—

(1) in the table of sections at the beginning of chapter 39, by inserting after the item relating to section 831 the following:

"832. Participation in nuclear and weapons of mass destruction threats to the United States.";

(2) by inserting after section 831 the following:

"§ 832. Participation in nuclear and weapons of mass destruction threats to the United States

"(a) Whoever, within the United States or subject to the jurisdiction of the United States, willfully participates in or provides material support or resources (as defined in section 2339A) to a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

"(b) There is extraterritorial Federal jurisdiction over an offense under this section.

"(c) Whoever without lawful authority develops, possesses, or attempts or conspires to develop or possess a radiological weapon, or threatens to use or uses a radiological weapon against any person within the United States, or a national of the United States while such national is outside the United States or against any property that is owned, leased, funded or used by the United States, whether that property is within or outside the United States, shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(d) As used in this section—

"(1) 'nuclear weapons program' means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons;

"(2) 'weapons of mass destruction program' means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as defined in section 2332a(c));

"(3) 'foreign terrorist power' means a terrorist organization designated under section 219 of the Immigration and Nationality Act, or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961; and

"(4) 'nuclear weapon' means any weapon that contains or uses nuclear material as defined in section 831(f)(1)."; and

(3) in section 2332b(g)(5)(B)(i), by inserting after "nuclear materials)," the following: "832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)".

SEC. 2054. PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Al Qaeda has tried to acquire or make weapons of mass destruction since 1994 or earlier.

(2) The United States doubtless would be a prime target for use of any such weapon by al Qaeda.

(3) Although the United States Government has redoubled its international commitments to supporting the programs for Cooperative Threat Reduction and other nonproliferation assistance programs, nonproliferation experts continue to express deep concern about the United States Government's commitment and approach to securing the weapons of mass destruction and related highly dangerous materials that are still scattered among Russia and other countries of the former Soviet Union.

(4) The cost of increased investment in the prevention of proliferation of weapons of mass destruction and related dangerous materials is greatly outweighed by the potentially catastrophic cost to the United States of use of weapons of mass destruction or related dangerous materials by the terrorists who are so eager to acquire them.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) maximum effort to prevent the proliferation of weapons of mass destruction, wherever such proliferation may occur, is warranted; and

(2) the programs of the United States Government to prevent or counter the proliferation of weapons of mass destruction, including the Proliferation Security Initiative, the programs for Cooperative Threat Reduction, and other nonproliferation assistance programs, should be expanded, improved, and better funded to address the global dimensions of the proliferation threat.

(c) REQUIREMENT FOR STRATEGY.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress—

(1) a strategy for expanding and strengthening the Proliferation Security Initiative, the programs for Cooperative Threat Reduction, and other nonproliferation assistance programs; and

(2) an estimate of the funding necessary to execute that strategy.

(d) REPORT ON REFORMING THE COOPERATIVE THREAT REDUCTION PROGRAM AND OTHER NON-PROLIFERATION ASSISTANCE PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report evaluating whether the United States could more effectively address the global threat of nuclear proliferation by—

(1) establishing a central coordinator for the programs for Cooperative Threat Reduction;

(2) eliminating the requirement that the President spend no more than $50,000,000 annually on programs for Cooperative Threat Reduction and other non-proliferation assistance programs carried out outside the former Soviet Union; or

(3) repealing the provisions of the Soviet Nuclear Threat Reduction Act of 1991 (22 U.S.C. 2551 note) that place conditions on assistance to the former Soviet Union unrelated to bilateral cooperation on weapons dismantlement.

SEC. 2055. SENSE OF CONGRESS REGARDING INTERNATIONAL COUNTERPROLIFERATION EFFORTS.

It is the sense of Congress that the United States should work with the international community to develop laws and an international legal regime with universal jurisdiction to enable the interdiction of nuclear material and technology, and the capture, interdiction, and prosecution of individuals or entities involved in the smuggling or transfer of nuclear material or technology to any state in the world where they do not fully disclose the nature of their nuclear program.

SEC. 2056. REMOVAL OF POTENTIAL NUCLEAR WEAPONS MATERIALS FROM VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that removing potential nuclear weapons materials from vulnerable sites around the world would reduce the possibility that such materials could fall into the hands of al Qaeda or other groups and states hostile to the United States, and should be a top priority for achieving the national security of the United States. Several actions may be taken to reduce the risk that nuclear weapons materials may end up in terrorist hands, including—

(1) transporting such materials from such sites to secure facilities;

(2) providing interim security upgrades for such materials pending their removal from their current sites;

(3) managing such materials after their arrival at secure facilities;

(4) purchasing such materials;

(5) converting such sites to the use of low-enriched uranium fuels;

(6) assisting in the closure and decommissioning of such sites;

(7) providing incentives to facilitate the removal of such materials from vulnerable facilities;

(8) arranging for the shipment of potential nuclear weapons materials to the United States, or to other countries willing to accept such materials and able to provide high levels of security for such materials, and dispose of such materials, in order to ensure that United States national security objectives are accomplished as quickly and effectively as possible; and

(9) providing funds to upgrade security and accounting at sites where potential nuclear weapons materials will remain for an extended period in order to ensure that such materials are secure against plausible potential threats, and will remain so in the future.

(b) REPORT.—

(1) Not later than 30 days after the submittal to Congress of the budget of the President for fiscal year 2006 pursuant to section 1105(a) of title 31, United States Code, the administration shall submit to Congress a report that includes the following:

(A) A list of the sites determined to be of the highest priorities for removal of potential nuclear weapons materials, based on the quantity and attractiveness of such materials at such sites and the risk of theft or diversion of such materials for weapons purposes.

(B) An inventory of all sites worldwide where highly-enriched uranium or separated plutonium is located, including, to the extent practicable, a prioritized assessment of the terrorism and proliferation risk posed by such materials at each such site, based on the quantity of such materials, the attractiveness of such materials for use in nuclear weapons, the current level of security and accounting for such materials, and the level of threat (including the effects of terrorist or criminal activity and the pay and mo-

rale of personnel and guards) in the country or region where such sites are located.

(C) A strategic plan, including measurable milestones and metrics.

(D) An estimate of the funds required to secure these materials.

(E) The recommendations of the Administration on whether any further legislative actions or international agreements are necessary to facilitate the accomplishment of the objective.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

(c) POTENTIAL NUCLEAR WEAPONS MATERIAL DEFINED.—In this section, the term "potential nuclear weapons material" means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated materials if the radiation field from such materials is not sufficient to prevent the theft and use of such materials for an explosive nuclear chain reaction.

Subtitle E—Money Laundering and Terrorist Financing

CHAPTER 1—FUNDING TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

SEC. 2101. ADDITIONAL AUTHORIZATION FOR FINCEN.

Subsection (d) of section 310 of title 31, United States Code, is amended—

(1) by striking "APPROPRIATIONS.—There are authorized" and inserting "APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized"; and

(2) by adding at the end the following new paragraph:

"(2) AUTHORIZATION FOR FUNDING KEY TECHNOLOGICAL IMPROVEMENTS IN MISSION-CRITICAL FINCEN SYSTEMS.—There are authorized to be appropriated for fiscal year 2005 the following amounts, which are authorized to remain available until expended:

"(A) BSA DIRECT.—For technological improvements to provide authorized law enforcement and financial regulatory agencies with Web-based access to FinCEN data, to fully develop and implement the highly secure network required under section 362 of Public Law 107–56 to expedite the filing of, and reduce the filing costs for, financial institution reports, including suspicious activity reports, collected by FinCEN under chapter 53 and related provisions of law, and enable FinCEN to immediately alert financial institutions about suspicious activities that warrant immediate and enhanced scrutiny, and to provide and upgrade advanced information-sharing technologies to materially improve the Government's ability to exploit the information in the FinCEN databanks $16,500,000.

"(B) ADVANCED ANALYTICAL TECHNOLOGIES.—To provide advanced analytical tools needed to ensure that the data collected by FinCEN under chapter 53 and related provisions of law are utilized fully and appropriately in safeguarding financial institutions and supporting the war on terrorism, $5,000,000.

"(C) DATA NETWORKING MODERNIZATION.—To improve the telecommunications infrastructure to support the improved capabilities of the FinCEN systems, $3,000,000.

"(D) ENHANCED COMPLIANCE CAPABILITY.—To improve the effectiveness of the Office of Compliance in FinCEN, $3,000,000.

"(E) DETECTION AND PREVENTION OF FINANCIAL CRIMES AND TERRORISM.—To provide development of, and training in the use of, technology to detect and prevent financial crimes and terrorism within and without the United States, $8,000,000.".

SEC. 2102. MONEY LAUNDERING AND FINANCIAL CRIMES STRATEGY REAUTHORIZATION.

(a) PROGRAM.—Section 5341(a)(2) of title 31, United States Code, is amended by striking "and 2003," and inserting "2003, and 2005,".

(b) REAUTHORIZATION OF APPROPRIATIONS.—Section 5355 of title 31, United States Code, is amended by adding at the end the following:

"Fiscal year 2004 ..... $15,000,000
Fiscal year 2005 ..... $15,000,000".

CHAPTER 2—ENFORCEMENT TOOLS TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

Subchapter A—Money Laundering Abatement and Financial Antiterrorism Technical Corrections

SEC. 2111. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004".

SEC. 2112. TECHNICAL CORRECTIONS TO PUBLIC LAW 107–56.

(a) The heading of title III of Public Law 107–56 is amended to read as follows:

"TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM ACT OF 2001".

(b) The table of contents of Public Law 107–56 is amended by striking the item relating to title III and inserting the following new item:

"TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM ACT OF 2001".

(c) Section 302 of Public Law 107–56 is amended—

(1) in subsection (a)(4), by striking the comma after "movement of criminal funds";

(2) in subsection (b)(7), by inserting "or types of accounts" after "classes of international transactions"; and

(3) in subsection (b)(10), by striking "subchapters II and III" and inserting "subchapter II".

(d) Section 303(a) of Public Law 107–56 is amended by striking "Anti-Terrorist Financing Act" and inserting "Financial Antiterrorism Act".

(e) The heading for section 311 of Public Law 107–56 is amended by striking "**OR INTERNATIONAL TRANSACTIONS**" and inserting "**INTERNATIONAL TRANSACTIONS, OR TYPES OF ACCOUNTS**".

(f) Section 314 of Public Law 107–56 is amended—

(1) in paragraph (1)—

(A) by inserting a comma after "organizations engaged in"; and

(B) by inserting a comma after "credible evidence of engaging in";

(2) in paragraph (2)(A)—

(A) by striking "and" after "nongovernmental organizations,"; and

(B) by inserting a comma after "unwittingly involved in such finances";

(3) in paragraph (3)(A)—

(A) by striking "to monitor accounts of" and inserting "monitor accounts of,"; and

(B) by striking the comma after "organizations identified"; and

(4) in paragraph (3)(B), by inserting "financial" after "size, and nature of the".

(g) Section 321 of Public Law 107–56 is amended by striking "5312(2)" and inserting "5312(a)(2)".

(h) Section 325 of Public Law 107–56 is amended by striking "as amended by section 202 of this title," and inserting "as amended by section 352,".

(i) Subsections (a)(2) and (b)(2) of section 327 of Public Law 107–56 are each amended by inserting a period after "December 31, 2001" and striking all that follows through the period at the end of each such subsection.

(j) Section 356(c)(4) of Public Law 107–56 is amended by striking "or business or other grantor trust" and inserting ", business trust, or other grantor trust".

(k) Section 358(e) of Public Law 107–56 is amended—

(1) by striking "Section 123(a)" and inserting "That portion of section 123(a)";

(2) by striking "is amended to read" and inserting "that precedes paragraph (1) of such section is amended to read"; and

(3) by striking "." at the end of such section and inserting "—'".

(l) Section 360 of Public Law 107–56 is amended—

(1) in subsection (a), by inserting "the" after "utilization of the funds of"; and

(2) in subsection (b), by striking "at such institutions" and inserting "at such institution".

(m) Section 362(a)(1) of Public Law 107–56 is amended by striking "subchapter II or III" and inserting "subchapter II".

(n) Section 365 of Public Law 107–56 is amended —

(1) by redesignating the 2nd of the 2 subsections designated as subsection (c) (relating to a clerical amendment) as subsection (d); and

(2) by redesignating subsection (f) as subsection (e).

(o) Section 365(d) of Public Law 107–56 (as so redesignated by subsection (n) of this section) is amended by striking "section 5332 (as added by section 112 of this title)" and inserting "section 5330".

SEC. 2113. TECHNICAL CORRECTIONS TO OTHER PROVISIONS OF LAW.

(a) Section 310(c) of title 31, United States Code, is amended by striking "the Network" each place such term appears and inserting "FinCEN".

(b) Section 5312(a)(3)(C) of title 31, United States Code, is amended by striking "sections 5333 and 5316" and inserting "sections 5316 and 5331".

(c) Section 5318(i) of title 31, United States Code, is amended—

(1) in paragraph (3)(B), by inserting a comma after "foreign political figure" the 2nd place such term appears; and

(2) in the heading of paragraph (4), by striking "DEFINITION" and inserting "DEFINITIONS".

(d) Section 5318(k)(1)(B) of title 31, United States Code, is amended by striking "section 5318A(f)(1)(B)" and inserting "section 5318A(e)(1)(B)".

(e) The heading for section 5318A of title 31, United States Code, is amended to read as follows:

"§ 5318A Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern".

(f) Section 5318A of title 31, United States Code, is amended—

(1) in subsection (a)(4)(A), by striking ", as defined in section 3 of the Federal Deposit Insurance Act," and inserting " (as defined in section 3 of the Federal Deposit Insurance Act)";

(2) in subsection (a)(4)(B)(iii), by striking "or class of transactions" and inserting "class of transactions, or type of account";

(3) in subsection (b)(1)(A), by striking "or class of transactions to be" and inserting "class of transactions, or type of account to be"; and

(4) in subsection (e)(3), by inserting "or subsection (i) or (j) of section 5318" after "identification of individuals under this section".

(g) Section 5324(b) of title 31, United States Code, is amended by striking "5333" each place such term appears and inserting "5331".

(h) Section 5332 of title 31, United States Code, is amended—

(1) in subsection (b)(2), by striking ", subject to subsection (d) of this section"; and

(2) in subsection (c)(1), by striking ", subject to subsection (d) of this section,".

(i) The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by striking the item relating to section 5318A and inserting the following new item:

"5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern.".

(j) Section 18(w)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1828(w)(3)) is amended by inserting a comma after "agent of such institution".

(k) Section 21(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(a)(2)) is amended by striking "recognizes that" and inserting "recognizing that".

(l) Section 626(e) of the Fair Credit Reporting Act (15 U.S.C. 1681v(e)) is amended by striking "governmental agency" and inserting "government agency".

SEC. 2114. REPEAL OF REVIEW.

Title III of Public Law 107–56 is amended by striking section 303 (31 U.S.C. 5311 note).

SEC. 2115. EFFECTIVE DATE.

The amendments made by this subtitle to Public Law 107–56, the United States Code, the Federal Deposit Insurance Act, and any other provision of law shall take effect as if such amendments had been included in Public Law 107–56, as of the date of the enactment of such Public Law, and no amendment made by such Public Law that is inconsistent with an amendment made by this subtitle shall be deemed to have taken effect.

Subchapter B—Additional Enforcement Tools

SEC. 2121. BUREAU OF ENGRAVING AND PRINTING SECURITY PRINTING.

(a) PRODUCTION OF DOCUMENTS.—Section 5114(a) of title 31, United States Code (relating to engraving and printing currency and security documents), is amended—

(1) by striking "(a) The Secretary of the Treasury" and inserting:

"(a) AUTHORITY TO ENGRAVE AND PRINT.—

"(1) IN GENERAL.—The Secretary of the Treasury"; and

(2) by adding at the end the following new paragraphs:

"(2) ENGRAVING AND PRINTING FOR OTHER GOVERNMENTS.—The Secretary of the Treasury may produce currency, postage stamps, and other security documents for foreign governments if—

"(A) the Secretary of the Treasury determines that such production will not interfere with engraving and printing needs of the United States; and

"(B) the Secretary of State determines that such production would be consistent with the foreign policy of the United States.

"(3) PROCUREMENT GUIDELINES.—Articles, material, and supplies procured for use in the production of currency, postage stamps, and other security documents for foreign governments pursuant to paragraph (2) shall be treated in the same manner as articles, material, and supplies procured for public use within the United States for purposes of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.; commonly referred to as the Buy American Act).".

(b) REIMBURSEMENT.—Section 5143 of title 31, United States Code (relating to payment for services of the Bureau of Engraving and Printing), is amended—

(1) in the first sentence, by inserting "or to a foreign government under section 5114" after "agency";

(2) in the second sentence, by inserting "and other" after "including administrative"; and

(3) in the last sentence, by inserting ", and the Secretary shall take such action, in coordination with the Secretary of State, as may be appropriate to ensure prompt payment by a foreign government of any invoice or statement of account submitted by the Secretary with respect to services rendered under section 5114" before the period at the end.

SEC. 2122. CONDUCT IN AID OF COUNTERFEITING.

(a) IN GENERAL.—Section 474(a) of title 18, United States Code, is amended by inserting after the paragraph beginning "Whoever has in his control, custody, or possession any plate" the following:

" Whoever, with intent to defraud, has in his custody, control, or possession any material that can be used to make, alter, forge or counterfeit any obligations and other securities of the United States or any part of such securities and obligations, except under the authority of the Secretary of the Treasury; or".

(b) FOREIGN OBLIGATIONS AND SECURITIES.—Section 481 of title 18, United States Code, is amended by inserting after the paragraph beginning "Whoever, with intent to defraud" the following:

" Whoever, with intent to defraud, has in his custody, control, or possession any material that can be used to make, alter, forge or counterfeit any obligation or other security of any foreign government, bank or corporation; or".

(c) COUNTERFEIT ACTS.—Section 470 of title 18, United States Code, is amended by striking "or 474" and inserting "474, or 474A".

(d) MATERIALS USED IN COUNTERFEITING.—Section 474A(b) of title 18, United States Code, is amended by striking "any essentially identical" and inserting "any thing or material made after or in the similitude of any".

Subtitle F—Criminal History Background Checks

SEC. 2141. SHORT TITLE.

This subtitle may be cited as the "Criminal History Access Means Protection of Infrastructures and Our Nation Act".

SEC. 2142. CRIMINAL HISTORY BACKGROUND CHECKS.

(a) IN GENERAL.—Section 534 of title 28, United States Code, is amended by adding at the end the following:

"(f)(1) Under rules prescribed by the Attorney General, the Attorney General shall, within 60 days after the date of enactment, initiate a pilot program to establish and maintain a system for providing to an employer criminal history information that—

"(A) is in the possession of the Attorney General; and

"(B) is requested by an employer as part of an employee criminal history investigation that has been authorized by the State where the employee works or where the employer has their principal place of business;

in order to ensure that a prospective employee is suitable for certain employment positions.

"(2) The Attorney General shall require that an employer seeking criminal history information of an employee request such information and submit fingerprints or other biometric identifiers as approved by the Attorney General to provide a positive and reliable identification of such prospective employee.

"(3) The Director of the Federal Bureau of Investigation may require an employer to pay a reasonable fee for such information.

"(4) Upon receipt of fingerprints or other biometric identifiers, the Attorney General shall conduct an Integrated Fingerprint Identification System of the Federal Bureau of Investigation (IAFIS) check and provide the results of such check to the requester.

"(5) As used in this subsection,

"(A) the term 'criminal history information' and 'criminal history records' includes——

"(i) an identifying description of the individual to whom it pertains;

"(ii) notations of arrests, detentions, indictments, or other formal criminal charges pertaining to such individual; and

"(iii) any disposition to a notation revealed in subparagraph (B), including acquittal, sentencing, correctional supervision, or release.

"(B) the term 'Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation (IAFIS)' means the national depository for fingerprint, biometric, and criminal history information, through which fingerprints are processed electronically.

"(6) Nothing in this subsection shall preclude the Attorney General from authorizing or requiring criminal history record checks on individuals employed or seeking employment in positions vital to the Nation's critical infrastructure or key resources as those terms are defined in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)) and section 2(9) of the Homeland Security Act of 2002 (6 U.S.C. 101(9)), if pursuant to a law or executive order.".

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 60 days after the conclusion of the pilot program, the Attorney General shall report to the appropriate committees of Congress regarding all statutory requirements for criminal history record checks that are required to be conducted by the Department of Justice or any of its components.

(2) IDENTIFICATION OF INFORMATION.—The Attorney General shall identify the number of records requested, including the type of information requested, usage of different terms and definitions regarding criminal history information, and the variation in fees charged for such information and who pays such fees.

(3) RECOMMENDATIONS.—The Attorney General shall make recommendations for consolidating the existing procedures into a unified procedure consistent with that provided in section 534(f) of title 28, United States Code, as amended by this subtitle. In making the recommendations to Congress, the Attorney General shall consider—

(A) the effectiveness of utilizing commercially available databases as a supplement to IAFIS criminal history information checks;

(B) the effectiveness of utilizing State databases as a supplement to IAFIS criminal history information checks;

(C) any feasibility studies by the Department of Justice of the FBI's resources and structure to establish a system to provide criminal history information; and

(D) privacy rights and other employee protections to include employee consent, access to the records used if employment was denied, an appeal mechanism, and penalties for misuse of the information.

SEC. 2143. PROTECT ACT.

Public law 108–21 is amended—

(1) in section 108(a)(2)(A) by striking "an 18 month" and inserting "a 30-month"; and

(2) in section 108(a)(3)(A) by striking "an 18-month" and inserting "a 30-month".

SEC. 2144. REVIEWS OF CRIMINAL RECORDS OF APPLICANTS FOR PRIVATE SECURITY OFFICER EMPLOYMENT.

(a) SHORT TITLE.—This section may be cited as the "Private Security Officer Employment Authorization Act of 2004".

(b) FINDINGS.—Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screen and trained.

(c) DEFINITIONS.—In this Act:

(1) EMPLOYEE.—The term "employee" includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.—The term "authorized employer" means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term "private security officer'—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term "security services" means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term "State identification bureau" means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.—

(1) IN GENERAL.—

(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act.

(B) EMPLOYEE RIGHTS.—

(i) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of a participating State the request to search the criminal history record information of the employee under this Act.

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this Act.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this Act, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.—

(i) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS.—In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.—Whoever knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.—

(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(i) collect fees to process background checks provided for by this Act; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) LIMITATIONS.—Any fee collected under this subsection—

(i) shall, consistent with Public Law 101–515 and Public Law 104–99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) STATE COSTS.—Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(5) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

SEC. 2145. TASK FORCE ON CLEARINGHOUSE FOR IAFIS CRIMINAL HISTORY RECORDS.

Not later than 60 days after the date of enactment of this Act, the Attorney General shall establish a task force to examine the establishment of a national clearinghouse to process IAFIS criminal history record requests received directly from employers providing private security guard services with respect to critical infrastructure (as defined in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e))) and other private security guard services. Members of this task force shall include representatives of the Department of Justice and the Federal Bureau of Investigation, in consultation with representatives of the security guard industry. Not later than 90 days after the establishment of the task force, the Attorney General shall submit to Congress a report outlining how the national clearinghouse shall be established, and specifying a date certain (within one year of the enactment of this Act) by which the national clearinghouse will begin operations.

Subtitle G—Protection of United States Aviation System From Terrorist Attacks

SEC. 2171. PROVISION FOR THE USE OF BIOMETRIC OR OTHER TECHNOLOGY.

(a) USE OF BIOMETRIC TECHNOLOGY.—Section 44903(h) of title 49, United States Code, is amended—

(1) in paragraph (4)(E) by striking "may provide for" and inserting "shall issue, not later than 120 days after the date of enactment of paragraph (5), guidance for"; and

(2) by adding at the end the following:

"(5) USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—In issuing guidance under paragraph (4)(E), the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Attorney General, representatives of the aviation industry, the biometrics industry, and the National Institute of Standards and Technology, shall establish, at a minimum—

"(A) comprehensive technical and operational system requirements and performance standards for the use of biometrics in airport access control systems (including airport perimeter access control systems) to ensure that the biometric systems are effective, reliable, and secure;

"(B) a list of products and vendors that meet such requirements and standards;

"(C) procedures for implementing biometric systems—

"(i) to ensure that individuals do not use an assumed identity to enroll in a biometric system; and

"(ii) to resolve failures to enroll, false matches, and false nonmatches; and

"(D) best practices for incorporating biometric technology into airport access control systems in the most effective manner, including a process to best utilize existing airport access control systems, facilities, and equipment and existing data networks connecting airports.

"(6) USE OF BIOMETRIC TECHNOLOGY FOR LAW ENFORCEMENT OFFICER TRAVEL.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this paragraph, the Assistant Secretary in consultation with the Attorney General shall—

"(i) establish a law enforcement officer travel credential that incorporates biometrics and is uniform across all Federal, State, and local government law enforcement agencies;

"(ii) establish a process by which the travel credential will be used to verify the identity of a Federal, State, or local government law enforcement officer seeking to carry a weapon on board an aircraft, without unnecessarily disclosing to the public that the individual is a law enforcement officer;

"(iii) establish procedures—

"(I) to ensure that only Federal, State, and local government law enforcement officers are issued the travel credential;

"(II) to resolve failures to enroll, false matches, and false non-matches relating to use of the travel credential; and

"(III) to invalidate any travel credential that is lost, stolen, or no longer authorized for use;

"(iv) begin issuance of the travel credential to each Federal, State, and local government law enforcement officer authorized by the Assistant Secretary to carry a weapon on board an aircraft; and

"(v) take such other actions with respect to the travel credential as the Secretary considers appropriate.

"(B) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

"(7) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) BIOMETRIC INFORMATION.—The term 'biometric information' means the distinct physical or behavioral characteristics that are used for identification, or verification of the identity, of an individual.

"(B) BIOMETRICS.—The term 'biometrics' means a technology that enables the automated identification, or verification of the identity, of an individual based on biometric information.

"(C) FAILURE TO ENROLL.—The term 'failure to enroll' means the inability of an individual to enroll in a biometric system due to an insufficiently distinctive biometric sample, the lack of a body part necessary to provide the biometric sample, a system design that makes it difficult to provide consistent biometric information, or other factors.

"(D) FALSE MATCH.—The term 'false match' means the incorrect matching of one individual's biometric information to another individual's biometric information by a biometric system.

"(E) FALSE NON-MATCH.—The term 'false non-match' means the rejection of a valid identity by a biometric system.

"(F) SECURE AREA OF AN AIRPORT.—The term 'secure area of an airport' means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).".

(b) FUNDING FOR USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—

(1) GRANT AUTHORITY.—Section 44923(a)(4) of title 49, United States Code, is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

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

"(4) for projects to implement biometric technologies in accordance with guidance issued under section 44903(h)(4)(E); and".

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 44923(i)(1) of such title is amended by striking "$250,000,000 for each of fiscal years 2004 through 2007" and inserting "$250,000,000 for fiscal year 2004, $345,000,000 for fiscal year 2005, and $250,000,000 for each of fiscal years 2006 and 2007".

SEC. 2172. TRANSPORTATION SECURITY STRATEGIC PLANNING.

Section 44904 of title 49, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (e); and

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

"(c) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

"(1) IN GENERAL.—The Secretary of Homeland Security in consultation with the Attorney General, shall prepare and update, as needed, a transportation sector specific plan and transportation modal security plans in accordance with this section.

"(2) CONTENTS.—At a minimum, the modal security plan for aviation prepared under paragraph (1) shall—

"(A) set risk-based priorities for defending aviation assets;

"(B) select the most practical and cost-effective methods for defending aviation assets;

"(C) assign roles and missions to Federal, State, regional, and local authorities and to stakeholders;

"(D) establish a damage mitigation and recovery plan for the aviation system in the event of a terrorist attack; and

"(E) include a threat matrix document that outlines each threat to the United States civil aviation system and the corresponding layers of security in place to address such threat.

"(3) REPORTS.—Not later than 180 days after the date of enactment of the subsection and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on the Judiciary of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the plans prepared under paragraph (1), including any updates to the plans. The report may be submitted in a classified format.

"(d) OPERATIONAL CRITERIA.—Not later than 90 days after the date of submission of the report under subsection (c)(3), the Assistant Secretary of Homeland Security (Transportation Security Administration) in consultation with the Attorney General shall issue operational criteria to protect airport infrastructure and operations against the threats identified in the plans prepared under subsection (c)(1) and shall approve best practices guidelines for airport assets.".

SEC. 2173. NEXT GENERATION AIRLINE PASSENGER PRESCREENING.

(a) IN GENERAL.—Section 44903(j)(2) of title 49, United States Code, is amended by adding at the end the following:

"(C) NEXT GENERATION AIRLINE PASSENGER PRESCREENING.—

"(i) COMMENCEMENT OF TESTING.—Not later than November 1, 2004, the Assistant Secretary of Homeland Security (Transportation Security Administration), or the designee of the Assistant Secretary, shall commence testing of a next generation passenger prescreening system that will allow the Department of Homeland Security to assume the performance of comparing passenger name records to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government.

"(ii) ASSUMPTION OF FUNCTION.—Not later than 180 days after completion of testing under clause (i), the Assistant Secretary, or the designee of the Assistant Secretary, shall assume the performance of the passenger prescreening function of comparing passenger name records to the automatic selectee and no fly lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government in performing that function.

"(iii) REQUIREMENTS.—In assuming performance of the function under clause (i), the Assistant Secretary shall—

"(I) establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the next generation passenger prescreening system determined that they might pose a security threat, to appeal such determination and correct information contained in the system;

"(II) ensure that Federal Government databases that will be used to establish the identity of a passenger under the system will not produce a large number of false positives;

"(III) establish an internal oversight board to oversee and monitor the manner in which the system is being implemented;

"(IV) establish sufficient operational safeguards to reduce the opportunities for abuse;

"(V) implement substantial security measures to protect the system from unauthorized access;

"(VI) adopt policies establishing effective oversight of the use and operation of the system; and

"(VII) ensure that there are no specific privacy concerns with the technological architecture of the system.

"(iv) PASSENGER NAME RECORDS.—Not later than 60 days after the completion of the testing of the next generation passenger prescreening system, the Assistant Secretary shall require air carriers to supply to the Assistant Secretary the passenger name records needed to begin implementing the next generation passenger prescreening system.

"(D) SCREENING OF EMPLOYEES AGAINST WATCHLIST.—The Assistant Secretary of Homeland Security (Transportation Security Administration), in coordination with the Secretary of Transportation and the Administrator of the Federal Aviation Administration, shall ensure that individuals are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before—

"(i) being certificated by the Federal Aviation Administration;

"(ii) being issued a credential for access to the secure area of an airport; or

"(iii) being issued a credential for access to the air operations area (as defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section) of an airport.

"(E) APPEAL PROCEDURES.—The Assistant Secretary shall establish a timely and fair process for individuals identified as a threat under subparagraph (D) to appeal the determination and correct any erroneous information.

"(F) DEFINITION.—In this paragraph, the term 'secure area of an airport' means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).".

(b) GAO REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date on which the Assistant Secretary of Homeland Security (Transportation Security Administration) assumes performance of the passenger prescreening function under section 44903(j)(2)(C)(ii) of title 49, United States Code, the Comptroller General shall submit to the appropriate congressional committees a report on the assumption of such function. The report may be submitted in a classified format.

(2) CONTENTS.—The report under paragraph (1) shall address—

(A) whether a system exists in the next generation passenger prescreening system whereby aviation passengers, determined to pose a threat and either delayed or prohibited from boarding their scheduled flights by the Transportation Security Administration, may appeal such a decision and correct erroneous information;

(B) the sufficiency of identifying information contained in passenger name records and any government databases for ensuring that a large number of false positives will not result under the next generation passenger prescreening system in a significant number of passengers being treated as a threat mistakenly or in security resources being diverted;

(C) whether the Transportation Security Administration stress tested the next generation passenger prescreening system;

(D) whether an internal oversight board has been established in the Department of Homeland Security to monitor the next generation passenger prescreening system;

(E) whether sufficient operational safeguards have been established to prevent the opportunities for abuse of the system;

(F) whether substantial security measures are in place to protect the passenger prescreening database from unauthorized access;

(G) whether policies have been adopted for the effective oversight of the use and operation of the system;

(H) whether specific privacy concerns still exist with the system; and

(I) whether appropriate life cycle cost estimates have been developed, and a benefit and cost analysis has been performed, for the system.

SEC. 2174. DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.

(a) NONMETALLIC WEAPONS AND EXPLOSIVES.—In order to improve security, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall give priority to developing, testing, improving, and deploying technology at screening checkpoints at airports that will detect nonmetallic weapons and explosives on the person of individuals, in their clothing, or in their carry-on baggage or personal property and shall ensure that the equipment alone, or as part of an integrated system, can detect under realistic operating conditions the types of nonmetallic weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.

(b) STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Assistant Secretary shall transmit to the appropriate congressional committees a strategic plan to promote the optimal utilization and deployment of explosive detection systems at airports to screen individuals and their carry-on baggage or personal property, including walk-through explosive detection portals, document scanners, shoe scanners, and any other explosive detection equipment for use at a screening checkpoint. The plan may be transmitted in a classified format.

(2) CONTENTS.—The strategic plan shall include descriptions of the operational applications of explosive detection equipment at airport screening checkpoints, a deployment schedule and quantities of equipment needed to implement the plan, and funding needs for implementation of the plan, including a financing plan that provides for leveraging non-Federal funding.

SEC. 2175. PILOT PROGRAM TO EVALUATE USE OF BLAST-RESISTANT CARGO AND BAGGAGE CONTAINERS.

(a) IN GENERAL.—Beginning not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall carry out a pilot program to evaluate the use of blast-resistant containers for cargo and baggage on passenger aircraft to minimize the potential effects of detonation of an explosive device.

(b) INCENTIVES FOR PARTICIPATION IN PILOT PROGRAM.—

(1) IN GENERAL.—As part of the pilot program, the Assistant Secretary shall provide incentives to air carriers to volunteer to test the use of blast-resistant containers for cargo and baggage on passenger aircraft.

(2) APPLICATIONS.—To volunteer to participate in the incentive program, an air carrier shall submit to the Assistant Secretary an application that is in such form and contains such information as the Assistant Secretary requires.

(3) TYPES OF ASSISTANCE.—Assistance provided by the Assistant Secretary to air carriers that volunteer to participate in the pilot program shall include the use of blast-resistant containers and financial assistance to cover increased costs to the carriers associated with the use and maintenance of the containers, including increased fuel costs.

(c) REPORT.—Not later than one year after the date of enactment of this Act, the Assistant Secretary shall submit to appropriate congressional committees a report on the results of the pilot program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $2,000,000. Such sums shall remain available until expended.

SEC. 2176. AIR CARGO SCREENING TECHNOLOGY.

The Transportation Security Administration shall develop technology to better identify, track, and screen air cargo.

SEC. 2177. AIRPORT CHECKPOINT SCREENING EXPLOSIVE DETECTION.

Section 44940 of title 49, United States Code, is amended by adding at the end the following:

"(i) CHECKPOINT SCREENING SECURITY FUND.—

"(1) ESTABLISHMENT.—There is established in the Department of Homeland Security a fund to be known as the 'Checkpoint Screening Security Fund'.

"(2) DEPOSITS.—In each of fiscal years 2005 and 2006, after amounts are made available under section 44923(h), the next $30,000,000 derived from fees received under subsection (a)(1) shall be available to be deposited in the Fund.

"(3) FEES.—The Secretary of Homeland Security shall impose the fee authorized by subsection (a)(1) so as to collect at least $30,000,000 in each of fiscal years 2005 and 2006 for deposit into the Fund.

"(4) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available for the purchase, deployment, and installation of equipment to improve the ability of security screening personnel at screening checkpoints to detect explosives.".

SEC. 2178. NEXT GENERATION SECURITY CHECKPOINT.

(a) PILOT PROGRAM.—The Transportation Security Administration shall develop, not later than 120 days after the date of enactment of this Act, and conduct a pilot program to test, integrate, and deploy next generation security checkpoint screening technology at not less than 5 airports in the United States.

(b) HUMAN FACTOR STUDIES.— The Administration shall conduct human factors studies to improve screener performance as part of the pilot program under subsection (a).

SEC. 2179. PENALTY FOR FAILURE TO SECURE COCKPIT DOOR.

(a) CIVIL PENALTY.—Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

"(6) PENALTY FOR FAILURE TO SECURE FLIGHT DECK DOOR.—Any person holding a part 119 certificate under part of title 14, Code of Federal Regulations, is liable to the Government for a civil penalty of not more than $25,000 for each violation, by the pilot in command of an aircraft owned or operated by such person, of any Federal regulation that requires that the flight deck door be closed and locked when the aircraft is being operated.".

(b) TECHNICAL CORRECTIONS.—

(1) COMPROMISE AND SETOFF FOR FALSE INFORMATION.—Section 46302(b) of such title is amended by striking "Secretary of Transportation" and inserting "Secretary of the Department of Homeland Security and, for a violation relating to section 46504, the Secretary of Transportation,".

(2) CARRYING A WEAPON.—Section 46303 of such title is amended—

(A) in subsection (b) by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security"; and

(B) in subsection (c)(2) by striking "Under Secretary of Transportation for Security" and inserting "Secretary of Homeland Security".

(3) ADMINISTRATIVE IMPOSITION OF PENALTIES.—Section 46301(d) of such title is amended—

(A) in the first sentence of paragraph (2) by striking "46302, 46303," and inserting "46302 (for a violation relating to section 46504),"; and

(B) in the second sentence of paragraph (2)—

(i) by striking "Under Secretary of Transportation for Security" and inserting "Secretary of Homeland Security"; and

(ii) by striking "44909)" and inserting "44909), 46302 (except for a violation relating to section 46504), 46303,";

(C) in each of paragraphs (2), (3), and (4) by striking "Under Secretary or" and inserting "Secretary of Homeland Security"; and

(D) in paragraph (4)(A) by moving clauses (i), (ii), and (iii) 2 ems to the left.

SEC. 2180. FEDERAL AIR MARSHAL ANONYMITY.

The Director of the Federal Air Marshal Service of the Department of Homeland Security shall continue to develop operational initiatives to protect the anonymity of Federal air marshals.

SEC. 2181. FEDERAL LAW ENFORCEMENT COUNTERTERRORISM TRAINING.

(a) The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall make available appropriate in-flight counterterrorism and weapons handling procedures and tactics training to Federal law enforcement officers who fly while on duty.

(b) The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall ensure that Transportation Security Administration screeners and Federal Air Marshals receive training in identifying fraudulent identification documents, including fraudulent or expired Visas and Passports. Such training shall also be made available to other Federal law enforcement agencies and local law enforcement agencies located in border states.

SEC. 2182. FEDERAL FLIGHT DECK OFFICER WEAPON CARRIAGE PILOT PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), with the concurrence of the Attorney General, shall implement a pilot program to allow pilots participating in the Federal flight deck officer program to transport their firearms on their persons. The Assistant Secretary, in consultation with the Attorney General, may prescribe any training, equipment, or procedures including procedures for reporting of missing, lost or stolen firearms, that the Assistant Secretary determines necessary to ensure safety and maximize weapon retention.

(b) REVIEW.—Not later than 1 year after the date of initiation of the pilot program, the Assistant Secretary shall conduct a review of the safety record of the pilot program and transmit a report on the results of the review to the appropriate congressional committees.

(c) OPTION.—If the Assistant Secretary as part of the review under subsection (b) determines that the safety level obtained under the pilot program is comparable to the safety level determined under existing methods of pilots carrying firearms on aircraft, the Assistant Secretary shall allow all pilots participating in the Federal flight deck officer program the option of carrying their firearm on their person subject to such requirements as the Assistant Secretary determines appropriate.

SEC. 2183. REGISTERED TRAVELER PROGRAM.

The Transportation Security Administration shall expedite implementation of the registered traveler program.

SEC. 2184. WIRELESS COMMUNICATION.

(a) STUDY.—The Transportation Security Administration, in consultation with the Federal Aviation Administration, shall conduct a study to determine the viability of providing devices or methods, including wireless methods, to enable a flight crew to discreetly notify the pilot in the case of a security breach or safety issue occurring in the cabin.

(b) MATTERS TO BE CONSIDERED.—In conducting the study, the Transportation Security Administration and the Federal Aviation Administration shall consider tech-

nology that is readily available and can be quickly integrated and customized for use aboard aircraft for flight crew communication.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Transportation Security Administration shall submit to the appropriate congressional committees a report on the results of the study.

SEC. 2185. SECONDARY FLIGHT DECK BARRIERS.

Not later than 6 months after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall transmit to the appropriate congressional committees a report on the costs and benefits associated with the use of secondary flight deck barriers and whether the use of such barriers should be mandated for all air carriers. The Assistant Secretary may transmit the report in a classified format.

SEC. 2186. EXTENSION.

Section 48301(a) of title 49, United States Code, is amended by striking "and 2005" and inserting "2005, and 2006".

SEC. 2187. PERIMETER SECURITY.

(a) REPORT.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with airport operators and law enforcement authorities, shall develop and submit to the appropriate congressional committee a report on airport perimeter security. The report may be submitted in a classified format.

(b) CONTENTS.—The report shall include—

(1) an examination of the feasibility of access control technologies and procedures, including the use of biometrics and other methods of positively identifying individuals prior to entry into secure areas of airports, and provide best practices for enhanced perimeter access control techniques; and

(2) an assessment of the feasibility of physically screening all individuals prior to entry into secure areas of an airport and additional methods for strengthening the background vetting process for all individuals credentialed to gain access to secure areas of airports.

SEC. 2188. EXTREMELY HAZARDOUS MATERIALS TRANSPORTATION SECURITY.

(a) RULEMAKING.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Attorney General and the heads of other appropriate Federal, State, and local government entities, security experts, representatives of the hazardous materials shipping industry and labor unions representing persons who work in the hazardous materials shipping industry, and other interested persons, shall issue, after notice and opportunity for public comment, regulations concerning the shipping of extremely hazardous materials.

(2) PURPOSES OF REGULATIONS.—The regulations shall be consistent, to the extent the Secretary determines appropriate, with and not duplicative of other Federal regulations and international agreements relating to the shipping of extremely hazardous materials and shall require—

(A) physical security measures for such shipments, such as the use of passive secondary containment of tanker valves, additional security force personnel, and surveillance technologies and barriers;

(B) concerned Federal, State, and local law enforcement authorities (including, if applicable, transit, railroad, or port authority police agencies) to be informed before an extremely hazardous material is transported within, through, or near an area of concern;

(C) coordination with Federal, State, and local law enforcement authorities to create response plans for a terrorist attack on a shipment of extremely hazardous materials;

(D) the use of currently available technologies and systems to ensure effective and immediate communication between transporters of extremely hazardous materials, law enforcement authorities and first responders;

(E) comprehensive and appropriate training in the area of extremely hazardous materials transportation security for all individuals who transport, load, unload, or are otherwise involved in the shipping of extremely hazardous materials or who would respond to an accident or incident involving a shipment of extremely hazardous material or would have to repair transportation equipment and facilities in the event of such an accident or incident; and

(F) for the transportation of extremely hazardous materials through or near an area of concern, the Secretary to determine whether or not the transportation could be made by one or more alternate routes at lower secu-

rity risk and, if the Secretary determines the transportation could be made by an alternate route, the use of such alternate route, except when the origination or destination of the shipment is located within the area of concern.

(b) JUDICIAL RELIEF.—A person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of hazardous materials and violates or fails to comply with a regulation issued by the Secretary under subsection (a) may be subject, in a civil action brought in United States district court, for each shipment with respect to which the violation occurs—

(1) to an order for injunctive relief; or

(2) to a civil penalty of not more than $100,000.

(c) ADMINISTRATIVE PENALTIES.—

(1) PENALTY ORDERS.—The Secretary may issue an order imposing an administrative penalty of not more than $1,000,000 for failure by a person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of hazardous materials to comply with a regulation issued by the Secretary under subsection (a).

(2) NOTICE AND HEARING.—Before issuing an order described in paragraph (1), the Secretary shall provide to the person against whom the penalty is to be assessed—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the person receives the notice, a hearing on the proposed order.

(3) PROCEDURES.—The Secretary may issue regulations establishing procedures for administrative hearings and appropriate review of penalties issued under this subsection, including necessary deadlines.

(d) WHISTLEBLOWER PROTECTION.—

(1) IN GENERAL.—No person involved in the shipping of extremely hazardous materials may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of any lawful act done by the person—

(A) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the person reasonably believes constitutes a violation of any law, rule or regulation related to the security of shipments of extremely hazardous materials, or any other threat to the security of shipments of extremely hazardous materials, when the information or assistance is provided to or the investigation is conducted by—

(i) a Federal regulatory or law enforcement agency;

(ii) any Member of Congress or any committee of Congress; or

(iii) a person with supervisory authority over the person (or such other person who has the authority to investigate, discover, or terminate misconduct); or

(B) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to a violation of any law, rule or regulation related to the security of shipments of extremely hazardous materials or any other threat to the security of shipments of extremely hazardous materials.

(C) to refuse to violate or assist in the violation of any law, rule, or regulation related to the security of shipments of extremely hazardous materials.

(2) ENFORCEMENT ACTION.—

(A) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of paragraph (1) may seek relief under paragraph (3), by—

(i) filing a complaint with the Secretary of Labor; or

(ii) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(B) PROCEDURE.—

(i) IN GENERAL.— An action under subparagraph (A)(i) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(ii) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(iii) BURDENS OF PROOF.—An action brought under subparagraph (A)(ii) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(iv) STATUTE OF LIMITATIONS.—An action under subparagraph (A) shall be commenced not later than 90 days after the date on which the violation occurs.

(3) REMEDIES.—

(A) IN GENERAL.—A person prevailing in any action under paragraph (2)(A) shall be entitled to all relief necessary to make the person whole.

(B) COMPENSATORY DAMAGES.—Relief for any action under subparagraph (A) shall include—

(i) reinstatement with the same seniority status that the person would have had, but for the discrimination;

(ii) the amount of any back pay, with interest; and

(iii) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(4) RIGHTS RETAINED BY PERSON.—Nothing in this subsection shall be deemed to diminish the rights, privileges, or remedies of any person under any Federal or State law, or under any collective bargaining agreement.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) EXTREMELY HAZARDOUS MATERIAL.—The term "extremely hazardous material" means—

(A) a material that is toxic by inhalation;

(B) a material that is extremely flammable;

(C) a material that is highly explosive; and

(D) any other material designated by the Secretary to be extremely hazardous.

(2) AREA OF CONCERN.—The term "area of concern" means an area that the Secretary determines could pose a particular interest to terrorists.

SEC. 2189. DEFINITIONS.

In this title, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term "appropriate congressional committees" means the Committee on Transportation and Infrastructure and the Committee on the Judiciary of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) AIR CARRIER.—The term "air carrier" has the meaning such term has under section 40102 of title 49, United States Code.

(3) SECURE AREA OF AN AIRPORT.—The term "secure area of an airport" means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).

Subtitle H—Other Matters

SEC. 2191. GRAND JURY INFORMATION SHARING.

(a) RULE AMENDMENTS.—Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)(ii), by striking "or state subdivision or of an Indian tribe" and inserting ", state subdivision, Indian tribe, or foreign government";

(B) in subparagraph (D)—

(i) by inserting after the first sentence the following: "An attorney for the government may also disclose any grand-jury matter involving a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate Federal, State, state subdivision, Indian tribal, or foreign government official for the purpose of preventing or responding to such a threat."; and

(ii) in clause (i)—

(I) by striking "federal"; and

(II) by adding at the end the following: "Any State, state subdivision, Indian tribal, or foreign government official who receives in-

formation under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and the National Intelligence Director shall jointly issue."; and

(C) in subparagraph (E)—

(i) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(ii) by inserting after clause (ii) the following:

"(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;"; and

(iii) in clause (iv), as redesignated—

(I) by striking "state or Indian tribal" and inserting "State, Indian tribal, or foreign"; and

(II) by striking "or Indian tribal official" and inserting "Indian tribal, or foreign government official"; and

(2) in paragraph (7), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6".

(b) CONFORMING AMENDMENT.—Section 203(c) of Public Law 107–56 (18 U.S.C. 2517 note) is amended by striking "Rule 6(e)(3)(C)(i)(V) and (VI)" and inserting "Rule 6(e)(3)(D)".

SEC. 2192. INTEROPERABLE LAW ENFORCEMENT AND INTELLIGENCE DATA SYSTEM.

(a) FINDINGS.—The Congress finds as follows:

(1) The interoperable electronic data system know as the "Chimera system", and required to be developed and implemented by section 202(a)(2) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)(2)), has not in any way been implemented.

(2) Little progress has been made since the enactment of such Act with regard to establishing a process to connect existing trusted systems operated independently by the respective intelligence agencies.

(3) It is advisable, therefore, to assign such responsibility to the National Intelligence Director.

(4) The National Intelligence Director should, pursuant to the amendments made by subsection (c), begin systems planning immediately upon assuming office to deliver an interim system not later than 1 year after the date of the enactment of this Act, and to deliver the fully functional Chimera system not later than September 11, 2007.

(5) Both the interim system, and the fully functional Chimera system, should be designed so that intelligence officers, Federal law enforcement agencies (as defined in section 2 of such Act (8 U.S.C. 1701)), operational counter-terror support center personnel, consular officers, and Department of Homeland Security enforcement officers have access to them.

(b) PURPOSES.—The purposes of this section are as follows:

(1) To provide the National Intelligence Director with the necessary authority and resources to establish both an interim data system and, subsequently, a fully functional Chimera system, to collect and share intelligence and operational information with the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) To require the National Intelligence Director to establish a state-of-the-art Chimera system with both biometric identification and linguistic capabilities satisfying the best technology standards.

(3) To ensure that the National Intelligence Center will have a fully functional capability, not later than September 11, 2007, for interoperable data and intelligence exchange with the agencies of the intelligence community (as so defined).

(c) AMENDMENTS.—

(1) IN GENERAL.—Title II of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1721 et seq.) is amended—

(A) in section 202(a)—

(i) by amending paragraphs (1) and (2) to read as follows:

"(1) INTERIM INTEROPERABLE INTELLIGENCE DATA EXCHANGE SYSTEM.—Not later than 1 year after assuming office, the National Intelligence Director shall establish an interim interoperable intelligence data exchange system that will connect the data systems operated independently by the entities in the intelligence community and by the National Counterterrorism Center, so as to permit automated data exchange among all of these entities. Immediately upon assuming office, the National Intelligence Director shall begin the plans necessary to establish such interim system.

"(2) CHIMERA SYSTEM.—Not later than September 11, 2007, the National Intelligence Director shall establish a fully functional interoperable law enforcement and intelligence electronic data system within the National Counterterrorism Center to provide immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is necessary to identify terrorists, and organizations and individuals that support terrorism. The system established under this paragraph shall referred to as the 'Chimera system'. ";

(ii) in paragraph (3)—

(I) by striking "President" and inserting "National Intelligence Director"; and

(II) by striking "the data system" and inserting "the interim system described in paragraph (1) and the Chimera system described in paragraph (2)";

(iii) in paragraph (4)(A), by striking "The data system" and all that follows through "(2)," and inserting "The interim system described in paragraph (1) and the Chimera system described in paragraph (2)";

(iv) in paragraph (5)—

(I) in the matter preceding subparagraph (A), by striking "data system under this subsection" and inserting "Chimera system described in paragraph (2)";

(II) in subparagraph (B), by striking "and" at the end;

(III) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(IV) by adding at the end the following:

"(D) to any Federal law enforcement or intelligence officer authorized to assist in the investigation, identification, or prosecution of terrorists, alleged terrorists, individuals supporting terrorist activities, and individuals alleged to support terrorist activities. "; and

(v) in paragraph (6)—

(I) by striking "President" and inserting "National Intelligence Director";

(II) by striking "the data system" and all that follows through "(2)," and inserting "the interim system described in paragraph (1) and the Chimera system described in paragraph (2)";

(B) in section 202(b)—

(i) in paragraph (1), by striking "The interoperable" and all that follows through "subsection (a)" and inserting "the Chimera system described in subsection (a)(2)";

(ii) in paragraph (2), by striking "interoperable electronic database" and inserting "Chimera system described in subsection (a)(2)"; and

(iii) by amending paragraph (4) to read as follows:

"(4) INTERIM REPORTS.—Not later than 6 months after assuming office, the National Intelligence Director shall submit a report to the appropriate committees of Congress on the progress in implementing each requirement of this section.";

(C) in section 204—

(i) by striking "Attorney General" each place such term appears and inserting "National Intelligence Director";

(ii) in subsection (d)(1), by striking "Attorney General's" and inserting "National Intelligence Director's"; and

(D) by striking section 203 and redesignating section 204 as section 203.

(2) CLERICAL AMENDMENT.—The table of contents for the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1701 et seq.) is amended—

(A) by striking the item relating to section 203; and

(B) by redesignating the item relating to section 204 as relating to section 203.

SEC. 2193. IMPROVEMENT OF INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States and to meet the intelligence needs of the United States, Congress makes the following findings:

(1) The Federal Bureau of Investigation has made significant progress in improving its intelligence capabilities.

(2) The Federal Bureau of Investigation must further enhance and fully institutionalize its ability to prevent, preempt, and disrupt terrorist threats to our homeland, our people, our allies, and our interests.

(3) The Federal Bureau of Investigation must collect, process, share, and disseminate, to the greatest extent permitted by applicable law, to the President, the Vice President, and other officials in the Executive Branch, all terrorism information and other information necessary to safeguard our people and advance our national and homeland security interests.

(4) The Federal Bureau of Investigation must move towards full and seamless coordination and cooperation with all other elements of the Intelligence Community, including full participation in, and support to, the National Counterterrorism Center.

(5) The Federal Bureau of Investigation must strengthen its pivotal role in coordination and cooperation with Federal, State, tribal, and local law enforcement agencies to ensure the necessary sharing of information for counterterrorism and criminal law enforcement purposes.

(6) The Federal Bureau of Investigation must perform its vital intelligence functions in a manner consistent with both with national intelligence priorities and respect for privacy and other civil liberties under the Constitution and laws of the United States.

(b) IMPROVEMENT OF INTELLIGENCE CAPABILITIES.—The Director of the Federal Bureau of Investigation shall establish a comprehensive intelligence program for—

(1) intelligence analysis, including recruitment and hiring of analysts, analyst training, priorities and status for analysis, and analysis performance measures;

(2) intelligence production, including product standards, production priorities, information sharing and dissemination, and customer satisfaction measures;

(3) production of intelligence that is responsive to national intelligence requirements and priorities, including measures of the degree to which each FBI headquarters and field component is collecting and providing such intelligence;

(4) intelligence sources, including source validation, new source development, and performance measures;

(5) field intelligence operations, including staffing and infrastructure, management processes, priorities, and performance measures;

(6) full and seamless coordination and cooperation with the other components of the Intelligence Community, consistent with their responsibilities; and

(7) sharing of FBI intelligence and information across Federal, state, and local governments, with the private sector, and with foreign partners as provided by law or by guidelines of the Attorney General.

(c) INTELLIGENCE DIRECTORATE.—The Director of the Federal Bureau of Investigation shall establish an Intelligence Directorate within the FBI. The Intelligence Directorate shall have the authority to manage and direct the intelligence operations of all FBI headquarters and field components. The Intelligence Directorate shall have responsibility for all components and functions of the FBI necessary for—

(1) oversight of FBI field intelligence operations;

(2) FBI human source development and management;

(3) FBI collection against nationally-determined intelligence requirements;

(4) language services;

(5) strategic analysis;

(6) intelligence program and budget management; and

(7) the intelligence workforce.

(d) NATIONAL SECURITY WORKFORCE.—The Director of the Federal Bureau of Investigation shall establish a specialized, integrated intelligence cadre composed of Special Agents, analysts, linguists, and surveillance specialists in a manner which creates and sustains within the FBI a workforce with substantial expertise in, and commitment to, the intelligence mission of the FBI. The Director shall—

(1) ensure that these FBI employees may make their career, including promotion to the most senior positions in the FBI, within this career track;

(2) establish intelligence cadre requirements for—

(A) training;

(B) career development and certification;

(C) recruitment, hiring, and selection;

(D) integrating field intelligence teams; and

(E) senior level field management;

(3) establish intelligence officer certification requirements, including requirements for training courses and assignments to other intelligence, national security, or homeland security components of the Executive branch, in order to advance to senior operational management positions in the FBI;

(4) ensure that the FBI's recruitment and training program enhances its ability to attract individuals with educational and professional backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence mission of the FBI;

(5) ensure that all Special Agents and analysts employed by the FBI after the date of the enactment of this Act shall receive basic training in both criminal justice matters and intelligence matters;

(6) ensure that all Special Agents employed by the FBI after the date of the enactment of this Act, to the maximum extent practicable, be given an opportunity to undergo, during their early service with the FBI, meaningful assignments in criminal justice matters and in intelligence matters;

(7) ensure that, to the maximum extent practical, Special Agents who specialize in intelligence are afforded the opportunity to work on intelligence matters over the remainder of their career with the FBI; and

(8) ensure that, to the maximum extent practical, analysts are afforded FBI training and career opportunities commensurate with the training and career opportunities afforded analysts in other elements of the intelligence community.

(e) FIELD OFFICE MATTERS.—The Director of the Federal Bureau of Investigation shall take appropriate actions to ensure the integration of analysis, Special Agents, linguists, and surveillance personnel in FBI field intelligence components and to provide effective leadership and infrastructure to support FBI field intelligence components. The Director shall—

(1) ensure that each FBI field office has an official at the level of Assistant Special Agent in Charge or higher with responsibility for the FBI field intelligence component; and

(2) to the extent practicable, provide for such expansion of special compartmented information facilities in FBI field offices as is necessary to ensure the discharge by the field intelligence components of the national security and criminal intelligence mission of the FBI.

(g) BUDGET MATTERS.—The Director of the Federal Bureau of Investigation shall, in consultation with the Director of the Office of Management and Budget, modify the budget structure of the FBI in order to organize the budget according to its four main programs as follows:

(1) Intelligence.

(2) Counterterrorism and counterintelligence.

(3) Criminal enterprise/Federal crimes.

(4) Criminal justice services.

(h) REPORTS.—

(1)(A) Not later than 180 days after the date of the enactment of this Act, and every twelve months thereafter, the Director of the Federal Bureau of Investigation shall submit to Congress a report on the progress made as of the date of such report in carrying out the requirements of this section.

(B) The Director shall include in the first report required by subparagraph (A) an estimate of the resources required to complete the expansion of special compartmented information facilities to carry out the intelligence mission of FBI field intelligence components.

(2) In each annual report required by paragraph (1)(A) the director shall include—

(A) a report on the progress made by each FBI field office during the period covered by such review in addressing FBI and national intelligence priorities;

(B) a report assessing the qualifications, status, and roles of analysts at FBI headquarters and in FBI field offices; and

(C) a report on the progress of the FBI in implementing information-sharing principles.

(3) A report required by this subsection shall be submitted—

(A) to each committee of Congress that has jurisdiction over the subject matter of such report; and

(B) in unclassified form, but may include a classified annex.

SEC. 2194. NUCLEAR FACILITY THREATS.

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954. Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration; and

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the Congress and the Nuclear Regulatory Commission a report—

(1) summarizing the types of threats identified under subsection (a); and

(2) classifying each type of threat identified under subsection (a), in accordance with existing laws and regulations, as either—

(A) involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or otherwise falling under the responsibilities of the Federal Government; or

(B) involving the type of risks that Nuclear Regulatory Commission licensees should be responsible for guarding against.

(c) FEDERAL ACTION REPORT.—Not later than 90 days after the date on which a report is transmitted under subsection (b), the President shall transmit to the Congress a report on actions taken, or to be taken, to address the types of threats identified under subsection (b)(2)(A). Such report may include a classified annex as appropriate.

(d) REGULATIONS.—Not later than 270 days after the date on which a report is transmitted under subsection (b), the Nuclear Regulatory Commission shall issue regulations, including changes to the design basis threat, to ensure that licensees address the threats identified under subsection (b)(2)(B).

(e) PHYSICAL SECURITY PROGRAM.—The Nuclear Regulatory Commission shall establish an operational safeguards response evaluation program that ensures that the physical protection capability and operational safeguards response for sensitive nuclear facilities, as determined by the Commission consistent with the protection of public health and the common defense and security, shall be tested periodically through Commission designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained. The exercises shall be conducted by a mock terrorist team consisting of Commission personnel with advanced knowledge of special weapons and tactics comparable to special operations forces of the Armed Forces. For purposes of this subsection, the term "sensitive nuclear facilities" includes at a minimum commercial nuclear power plants, including associated spent fuel storage facilities, spent fuel storage pools and dry cask storage at closed reactors, independent spent fuel storage facilities and geologic repository operations areas, category I fuel cycle facilities, and gaseous diffusion plants. There are authorized to be appropriated to the Nuclear Regulatory Commission $3,000,000 for the purposes of carrying out this subsection.

(f) CONTROL OF INFORMATION.—In carrying out this section, the President and the Nuclear Regulatory Commission shall control the dissemination of restricted data, safeguards information, and other classified national security information in a manner so as to ensure the common defense and security, consistent with chapter 12 of the Atomic Energy Act of 1954.

SEC. 2195. AUTHORIZATION AND CHANGE OF COPS PROGRAM TO SINGLE GRANT PROGRAM.

(a) IN GENERAL.—Section 1701 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended—

(1) by amending subsection (a) to read as follows:

"(a) GRANT AUTHORIZATION.—The Attorney General shall carry out a single grant program under which the Attorney General makes grants to States, units of local government, Indian tribal governments, other public and private entities, and multijurisdictional or regional consortia for the purposes described in subsection (b).";

(2) by striking subsections (b) and (c);

(3) by redesignating subsection (d) as subsection (b), and in that subsection—

(A) by striking "ADDITIONAL GRANT PROJECTS.—Grants made under subsection (a) may include programs, projects, and other activities to—" and inserting "USES OF GRANT AMOUNTS.—The purposes for which grants made under subsection (a) may be made are—";

(B) by redesignating paragraphs (1) through (12) as paragraphs (6) through (17), respectively;

(C) by inserting before paragraph (5) (as so redesignated) the following new paragraphs:

"(1) rehire law enforcement officers who have been laid off as a result of State and local budget reductions for deployment in community-oriented policing;

"(2) hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

"(3) procure equipment, technology, or support systems, or pay overtime, to increase the number of officers deployed in community-oriented policing;

"(4) improve security at schools and on school grounds in the jurisdiction of the grantee through—

"(A) placement and use of metal detectors, locks, lighting, and other deterrent measures;

"(B) security assessments;

"(C) security training of personnel and students;

"(D) coordination with local law enforcement; and

"(E) any other measure that, in the determination of the Attorney General, may provide a significant improvement in security;

"(5) pay for officers hired to perform intelligence, anti-terror, or homeland security duties exclusively;"; and

(D) by amending paragraph (9) (as so redesignated) to read as follows:

"(8) develop new technologies, including interoperable communications technologies, modernized criminal record technology, and forensic technology, to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime and to train law enforcement officers to use such technologies;";

(4) by redesignating subsections (e) through (k) as subsections (c) through (i), respectively;

(5) in subsection (c) (as so redesignated) by striking "subsection (i)" and inserting "subsection (g)"; and

(6) by adding at the end the following new subsection:

"(j) MATCHING FUNDS FOR SCHOOL SECURITY GRANTS.—Notwithstanding subsection (i), in the case of a grant under subsection (a) for the purposes described in subsection (b)(4)—

"(1) the portion of the costs of a program provided by that grant may not exceed 50 percent;

"(2) any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection; and

"(3) the Attorney General may provide, in the guidelines implementing this section, for the requirement of paragraph (1) to be waived or altered in the case of a recipient with a financial need for such a waiver or alteration.".

(b) CONFORMING AMENDMENT.—Section 1702 of title I of such Act (42 U.S.C. 3796dd–1) is amended in subsection (d)(2) by striking "section 1701(d)" and inserting "section 1701(b)".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(11) of title I of such Act (42 U.S.C. 3793(a)(11)) is amended—

(1) in subparagraph (A) by striking clause (i) and all that follows through the period at the end and inserting the following:

"(i) $1,007,624,000 for fiscal year 2005;

"(ii) $1,027,176,000 for fiscal year 2006; and

"(iii) $1,047,119,000 for fiscal year 2007."; and

(2) in subparagraph (B)—

(A) by striking "section 1701(f)" and inserting "section 1701(d)"; and

(B) by striking the third sentence.

Subtitle I—Police Badges

SEC. 2201. SHORT TITLE.

This subtitle may be cited as the "Badge Security Enhancement Act of 2004" .

SEC. 2202. POLICE BADGES.

Section 716 of title 18, United States Code, is amended in subsection (b)—

(1) by striking paragraphs (2) and (4); and

(2) by redesignating paragraph (3) as paragraph (2).

TITLE III—BORDER SECURITY AND TERRORIST TRAVEL

Subtitle A—Immigration Reform in the National Interest

CHAPTER 1—GENERAL PROVISIONS

SEC. 3001. ELIMINATING THE "WESTERN HEMISPHERE" EXCEPTION FOR CITIZENS.

(a) IN GENERAL.—

(1) IN GENERAL.—Section 215(b) of the Immigration and Nationality Act (8 U.S.C. 1185(b)) is amended to read as follows:

"(b)(1) Except as otherwise provided in this subsection, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless the citizen bears a valid United States passport.

"(2) Subject to such limitations and exceptions as the President may authorize and prescribe, the President may waive the application of paragraph (1) in the case of a citizen departing the United States to, or entering the United States from, foreign contiguous territory.

"(3) The President, if waiving the application of paragraph (1) pursuant to paragraph (2), shall require citizens departing the United States to, or entering the United States from, foreign contiguous territory to bear a document (or combination of documents) designated by the Secretary of Homeland Security under paragraph (4).

"(4) The Secretary of Homeland Security—

"(A) shall designate documents that are sufficient to denote identity and citizenship in the United States such that they may be used, either individually or in conjunction with another document, to establish that the bearer is a citizen or national of the United States for purposes of lawfully departing from or entering the United States; and

"(B) shall publish a list of those documents in the Federal Register.

"(5) A document may not be designated under paragraph (4) (whether alone or in combination with other documents) unless the Secretary of Homeland Security determines that the document—

"(A) may be relied upon for the purposes of this subsection; and

"(B) may not be issued to an alien unlawfully present in the United States.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2006.

(b) INTERIM RULE.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security—

(A) shall designate documents that are sufficient to denote identity and citizenship in the United States such that they may be used, either individually or in conjunction with another document, to establish that the bearer is a citizen or national of the United States for purposes of lawfully departing from or entering the United States; and

(B) shall publish a list of those documents in the Federal Register.

(2) LIMITATION ON PRESIDENTIAL AUTHORITY.—Beginning on the date that is 90 days after the publication described in paragraph (1)(B), the President, notwithstanding section 215(b) of the Immigration and Nationality Act (8 U.S.C. 1185(b)), may not exercise the President's authority under such section so as to permit any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States from any country other than foreign contiguous territory, unless the citizen bears a document (or combination of documents) designated under paragraph (1)(A).

(3) CRITERIA FOR DESIGNATION.—A document may not be designated under paragraph (1)(A) (whether alone or in combination with other documents) unless the Secretary of Homeland Security determines that the document—

(A) may be relied upon for the purposes of this subsection; and

(B) may not be issued to an alien unlawfully present in the United States.

(4) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act and shall cease to be effective on September 30, 2006.

SEC. 3002. MODIFICATION OF WAIVER AUTHORITY WITH RESPECT TO DOCUMENTATION REQUIREMENTS FOR NATIONALS OF FOREIGN CONTIGUOUS TERRITORIES AND ADJACENT ISLANDS.

(a) IN GENERAL.—Section 212(d)(4) of the Immigration and Nationality Act (8 U.S.C.1182(d)(4)) is amended—

(1) by striking "Attorney General" and inserting "Secretary of Homeland Security";

(2) by striking "on the basis of reciprocity" and all that follows through "or (C)"; and

(3) by adding at the end the following:

"Either or both of the requirements of such paragraph may also be waived by the Secretary of Homeland Security and the Secretary of State, acting jointly and on the basis of reciprocity, with respect to nationals of foreign contiguous territory or of adjacent islands, but only if such nationals are required, in order to be admitted into the United States, to be in possession of identification deemed by the Secretary of Homeland Security to be secure.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on December 31, 2006.

SEC. 3003. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

The Secretary of Homeland Security, in each of fiscal years 2006 through 2010, shall increase by not less than 2,000 the number of positions for full-time active-duty border patrol agents within the Department of Homeland Security above the number of such positions for which funds were allotted for the preceding fiscal year.

SEC. 3004. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

The Secretary of Homeland Security, in each of fiscal years 2006 through 2010, shall increase by not less than 800 the number of positions for full-time active-duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) above the number of such positions for which funds were allotted for the preceding fiscal year. At least half of these additional investigators shall be designated to investigate potential violations of section 274A of the Immigration and Nationality Act (8 U.S.C 1324a). Each State shall be allotted at least 3 of these additional investigators.

SEC. 3005. ALIEN IDENTIFICATION STANDARDS.

Section 211 of the Immigration and Nationality Act (8 U.S.C. 1181) is amended by adding at the end the following:

"(d) For purposes of establishing identity to any Federal employee, an alien present in the United States may present any document issued by the Attorney General or the Secretary of Homeland Security under the authority of one of the immigration laws (as defined in section 101(a)(17)), or an unexpired lawfully issued foreign passport. Subject to the limitations and exceptions in immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)), no other document may be presented for those purposes.".

SEC. 3006. EXPEDITED REMOVAL.

Section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) is amended by striking clauses (i) through (iii) and inserting the following:

"(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States, or who has not been admitted or paroled into the United States and has not been physically present in the United States continuously for the 5-year period immediately prior to the date of the determination of inadmissibility under this paragraph, is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review, unless—

"(I) the alien has been charged with a crime, is in criminal proceedings, or is serving a criminal sentence; or

"(II) the alien indicates an intention to apply for asylum under section 208 or a fear of persecution and the officer determines that the alien has been physically present in the United States for less than 1 year.

"(ii) CLAIMS FOR ASYLUM.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States, or who has not been admitted or paroled into the United States and has not been physically present in the

United States continuously for the 5-year period immediately prior to the date of the determination of inadmissibility under this paragraph, is inadmissible under section 212(a)(6)(C) or 212(a)(7), and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B) if the officer determines that the alien has been physically present in the United States for less than 1 year.".

SEC. 3007. PREVENTING TERRORISTS FROM OBTAINING ASYLUM.

(a) CONDITIONS FOR GRANTING ASYLUM.—Section 208(b) of the Immigration and Nationality Act (8 U.S.C. 1158(b)) is amended—

(1) in paragraph (1), by striking "The Attorney General" and inserting the following:

"(A) ELIGIBILITY.—The Secretary of Homeland Security or the Attorney General"; and

(2) by adding at the end the following:

"(B) BURDEN OF PROOF.—The burden of proof is on the applicant to establish that the applicant is a refugee within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of this Act, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be the central motive for persecuting the applicant. The testimony of the applicant may be sufficient to sustain such burden without corroboration, but only if it is credible, is persuasive, and refers to specific facts that demonstrate that the applicant is a refugee. Where the trier of fact finds that it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of the applicant's claim, such evidence must be provided unless a reasonable explanation is given as to why such information is not provided. The credibility determination of the trier of fact may be based, in addition to other factors, on the demeanor, candor, or responsiveness of the applicant or witness, the consistency between the applicant's or witness's written and oral statements, whether or not under oath, made at any time to any officer, agent, or employee of the United States, the internal consistency of each such statement, the consistency of such statements with the country conditions in the country from which the applicant claims asylum (as presented by the Department of State) and any inaccuracies or falsehoods in such statements. These factors may be considered individually or cumulatively.".

(b) STANDARD OF REVIEW FOR ORDERS OF REMOVAL.—Section 242(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(4)) is amended by adding after subparagraph (D) the following flush language: "No court shall reverse a determination made by an adjudicator with respect to the availability of corroborating evidence as described in section 208(b)(1)(B), unless the court finds that a reasonable adjudicator is compelled to conclude that such corroborating evidence is unavailable.".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect upon the date of enactment of this Act and shall apply to cases in which the final administrative removal order was issued before, on, or after the date of enactment of this Act.

SEC. 3008. REVOCATION OF VISAS AND OTHER TRAVEL DOCUMENTATION.

(a) LIMITATION ON REVIEW.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by adding at the end the following: "There shall be no means of administrative or judicial review of a revocation under this subsection, and no court or other person otherwise shall have jurisdiction to consider any claim challenging the validity of such a revocation.".

(b) CLASSES OF DEPORTABLE ALIENS.—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking "United States is" and inserting the following: "United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), is".

(c) REVOCATION OF PETITIONS.—Section 205 of the Immigration and Nationality Act (8 U.S.C. 1155) is amended—

(1) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(2) by striking the final two sentences.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to revocations under sections 205 and 221(i) of the Immigration and Nationality Act made before, on, or after such date.

SEC. 3009. JUDICIAL REVIEW OF ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraphs (A), (B), and (C), by inserting "(statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code" after "Notwithstanding any other provision of law"; and

(ii) by adding at the end the following:

"(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in this paragraph shall be construed as precluding consideration by the circuit courts of appeals of constitutional claims or pure questions of law raised upon petitions for review filed in accordance with this section. Notwithstanding any other provision of law (statutory and nonstatutory), including section 2241 of title 28, United States Code, or, except as provided in subsection (e), any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code, such petitions for review shall be the sole and exclusive means of raising any and all claims with respect to orders of removal entered or issued under any provision of this Act."; and

(B) by adding at the end the following:

"(4) CLAIMS UNDER THE UNITED NATIONS CONVENTION.—Notwithstanding any other provision of law (statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code, a petition for review by the circuit courts of appeals filed in accordance with this section is the sole and exclusive means of judicial review of claims arising under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment.

"(5) EXCLUSIVE MEANS OF REVIEW.—The judicial review specified in this subsection shall be the sole and exclusive means for review by any court of an order of removal entered or issued under any provision of this Act. For purposes of this title, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of title 28, United States Code, and review pursuant to any other provision of law.";

(2) in subsection (b)—

(A) in paragraph (3)(B), by inserting "pursuant to subsection (f)" after "unless"; and

(B) in paragraph (9), by adding at the end the following: "Except as otherwise provided in this subsection, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of title 28, United States Code, or by any other provision of law (statutory or nonstatutory), to hear any cause or claim subject to these consolidation provisions.";

(3) in subsection (f)(2), by inserting "or stay, by temporary or permanent order, including stays pending judicial review," after "no court shall enjoin"; and

(4) in subsection (g), by inserting "(statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code" after "notwithstanding any other provision of law".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of enactment of this Act and shall apply to cases in which the final administrative removal order was issued before, on, or after the date of enactment of this Act.

CHAPTER 2—DEPORTATION OF TERRORISTS AND SUPPORTERS OF TERRORISM

SEC. 3031. EXPANDED INAPPLICABILITY OF RESTRICTION ON REMOVAL.

(a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

(1) in the matter preceding clause (i), by striking "section 237(a)(4)(D)" and inserting "paragraph (4)(B) or (4)(D) of section 237(a)"; and

(2) in clause (iii), by striking "or";

(3) in clause (iv), by striking the period and inserting "; or" ;

(4) by inserting after clause (iv) and following:

"(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B), unless, in the case only of an alien described in subclause (IV) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States."; and

(5) by striking the last sentence.

(b) EXCEPTIONS.—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

(1) by striking "inadmissible under" each place such term appears and inserting "described in"; and

(2) by striking "removable under".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility or removal occurring or existing before, on, or after such date.

SEC. 3032. EXCEPTION TO RESTRICTION ON REMOVAL FOR TERRORISTS AND CRIMINALS.

(a) REGULATIONS.—

(1) REVISION DEADLINE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall revise the regulations prescribed by the Secretary to implement the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

(2) EXCLUSION OF CERTAIN ALIENS.—The revision—

(A) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)) (as amended by this title), including rendering such aliens ineligible for withholding or deferral of removal under the Convention; and

(B) shall ensure that the revised regulations operate so as to—

(i) allow for the reopening of determinations made under the regulations before the effective date of the revision; and

(ii) apply to acts and conditions constituting a ground for ineligibility for the protection of such regulations, as revised, regardless of when such acts or conditions occurred.

(3) BURDEN OF PROOF.—The revision shall also ensure that the burden of proof is on the applicant for withholding or deferral of removal under the Convention to establish by clear and convincing evidence that he or she would be tortured if removed to the proposed country of removal.

(b) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

SEC. 3033. ADDITIONAL REMOVAL AUTHORITIES.

(a) IN GENERAL.—Section 241(b) of the Immigration and Nationality Act (8 U.S.C. 1231(b)) is amended—

(1) in paragraph (1)—

(A) in each of subparagraphs (A) and (B), by striking the period at the end and inserting "unless, in the opinion of the Secretary of Homeland Security, removing the alien to such country would be prejudicial to the United States."; and

(B) by amending subparagraph (C) to read as follows:

"(C) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated in subparagraph (A) or (B), the Secretary of Homeland Security shall remove the alien to—

"(i) the country of which the alien is a citizen, subject, or national, where the alien was born, or where the alien has a residence, unless the country physically prevents the alien from entering the country upon the alien's removal there; or

"(ii) any country whose government will accept the alien into that country."; and

(2) in paragraph (2)—

(A) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(B) by amending subparagraph (D) to read as follows:

"(D) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated under subparagraph (A)(i), the Secretary of Homeland Security shall remove the alien to a country of which the alien is a subject, national, or citizen, or where the alien has a residence, unless—

"(i) such country physically prevents the alien from entering the country upon the alien's removal there; or

"(ii) in the opinion of the Secretary of Homeland Security, removing the alien to the country would be prejudicial to the United States."; and

(C) by amending subparagraph (E)(vii) to read as follows:

"(vii) Any country whose government will accept the alien into that country.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to any deportation, exclusion, or removal on or after such date pursuant to any deportation, exclusion, or removal order, regardless of whether such order is administratively final before, on, or after such date.

CHAPTER 3—PREVENTING COMMERCIAL ALIEN SMUGGLING

SEC. 3041. BRINGING IN AND HARBORING CERTAIN ALIENS.

(a) CRIMINAL PENALTIES.—Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended by adding at the end the following:

"(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

"(A) the offense was part of an ongoing commercial organization or enterprise;

"(B) aliens were transported in groups of 10 or more;

"(C) aliens were transported in a manner that endangered their lives; or

"(D) the aliens presented a life-threatening health risk to people in the United States.".

(b) OUTREACH PROGRAM.—Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324), as amended by subsection (a), is further amended by adding at the end the following:

"(f) OUTREACH PROGRAM.—The Secretary of Homeland Security, in consultation as appropriate with the Attorney General and the Secretary of State, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

Subtitle B—Identity Management Security

CHAPTER 1—IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL IDENTIFICATION CARDS

SEC. 3051. DEFINITIONS.

In this chapter, the following definitions apply:

(1) DRIVER'S LICENSE.—The term "driver's license" means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) IDENTIFICATION CARD.—The term "identification card" means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(4) STATE.—The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 3052. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL.—Beginning 3 years after the date of enactment of this Act, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in

such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

(1) The person's full legal name.

(2) The person's date of birth.

(3) The person's gender.

(4) The person's driver license or identification card number.

(5) A photograph of the person.

(6) The person's address of principal residence.

(7) The person's signature.

(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

(9) A common machine-readable technology, with defined minimum data elements.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principal residence.

(2) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1).

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.

SEC. 3053. LINKING OF DATABASES.

(a) IN GENERAL.—To be eligible to receive any grant or other type of financial assistance made available under this subtitle, a State shall participate in the inter-

state compact regarding sharing of driver license data, known as the "Driver License Agreement", in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.

(b) REQUIREMENTS FOR INFORMATION.—A State motor vehicle database shall contain, at a minimum, the following information:

(1) All data fields printed on drivers' licenses and identification cards issued by the State.

(2) Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 3054. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

Section 1028(a)(8) of title 18, United States Code, is amended by striking "false authentication features" and inserting "false or actual authentication features".

SEC. 3055. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this chapter.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this chapter.

SEC. 3056. AUTHORITY.

(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 3052(a)(1) if the State provides adequate justification for noncompliance.

CHAPTER 2—IMPROVED SECURITY FOR BIRTH CERTIFICATES

SEC. 3061. DEFINITIONS.

(a) APPLICABILITY OF DEFINITIONS.—Except as otherwise specifically provided, the definitions contained in section 3051 apply to this chapter.

(b) OTHER DEFINITIONS.—In this chapter, the following definitions apply:

(1) BIRTH CERTIFICATE.—The term "birth certificate" means a certificate of birth—

(A) for an individual (regardless of where born)—

(i) who is a citizen or national of the United States at birth; and

(ii) whose birth is registered in the United States; and

(B) that—

(i) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

(ii) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

(2) REGISTRANT.—The term "registrant" means, with respect to a birth certificate, the person whose birth is registered on the certificate.

(3) STATE.—The term "State" shall have the meaning given such term in section 3051; except that New York City shall be treated as a State separate from New York.

SEC. 3062. APPLICABILITY OF MINIMUM STANDARDS TO LOCAL GOVERNMENTS.

The minimum standards in this chapter applicable to birth certificates issued by a State shall also apply to birth certificates issued by a local government in the State. It shall be the responsibility of the State to ensure that local governments in the State comply with the minimum standards.

SEC. 3063. MINIMUM STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL.—Beginning 3 years after the date of enactment of this Act, a Federal agency may not accept, for any official purpose, a birth certificate issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in

such manner as the Secretary, in consultation with the Secretary of Health and Human Services, may prescribe by regulation.

(b) MINIMUM DOCUMENT STANDARDS.—To meet the requirements of this section, a State shall include, on each birth certificate issued to a person by the State, the use of safety paper, the seal of the issuing custodian of record, and such other features as the Secretary may determine necessary to prevent tampering, counterfeiting, and otherwise duplicating the birth certificate for fraudulent purposes. The Secretary may not require a single design to which birth certificates issued by all States must conform.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require and verify the following information from the requestor before issuing an authenticated copy of a birth certificate:

(A) The name on the birth certificate.

(B) The date and location of the birth.

(C) The mother's maiden name.

(D) Substantial proof of the requestor's identity.

(2) ISSUANCE TO PERSONS NOT NAMED ON BIRTH CERTIFICATE.—To meet the requirements of this section, in the case of a request by a person who is not named on the birth certificate, a State must require the presentation of legal authorization to request the birth certificate before issuance.

(3) ISSUANCE TO FAMILY MEMBERS.—Not later than one year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services and the States, shall establish minimum standards for issuance of a birth certificate to specific family members, their authorized representatives, and others who demonstrate that the certificate is needed for the protection of the requestor's personal or property rights.

(4) WAIVERS.—A State may waive the requirements set forth in subparagraphs (A) through (C) of subsection (c)(1) in exceptional circumstances, such as the incapacitation of the registrant.

(5) APPLICATIONS BY ELECTRONIC MEANS.—To meet the requirements of this section, for applications by electronic means, through the mail or by phone or fax, a State shall employ third party verification, or equivalent verification, of the identity of the requestor.

(6) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall verify the documents used to provide proof of identity of the requestor.

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt, at a minimum, the following practices in the issuance and administration of birth certificates:

(1) Establish and implement minimum building security standards for State and local vital record offices.

(2) Restrict public access to birth certificates and information gathered in the issuance process to ensure that access is restricted to entities with which the State has a binding privacy protection agreement.

(3) Subject all persons with access to vital records to appropriate security clearance requirements.

(4) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance process.

(5) Establish and implement internal operating system standards for paper and for electronic systems.

(6) Establish a central database that can provide interoperative data exchange with other States and with Federal agencies, subject to privacy restrictions and confirmation of the authority and identity of the requestor.

(7) Ensure that birth and death records are matched in a comprehensive and timely manner, and that all electronic birth records and paper birth certificates of decedents are marked "deceased".

(8) Cooperate with the Secretary in the implementation of electronic verification of vital events under section 3065.

SEC. 3064. ESTABLISHMENT OF ELECTRONIC BIRTH AND DEATH REGISTRATION SYSTEMS.

In consultation with the Secretary of Health and Human Services and the Commissioner of Social Security, the Secretary shall take the following actions:

(1) Work with the States to establish a common data set and common data exchange protocol for electronic birth registration systems and death registration systems.

(2) Coordinate requirements for such systems to align with a national model.

(3) Ensure that fraud prevention is built into the design of electronic vital registration systems in the collection of vital event data, the issuance of birth certificates, and the exchange of data among government agencies.

(4) Ensure that electronic systems for issuing birth certificates, in the form of printed abstracts of birth records or digitized images, employ a common format of the certified copy, so that those requiring such documents can quickly confirm their validity.

(5) Establish uniform field requirements for State birth registries.

(6) Not later than 1 year after the date of enactment of this Act, establish a process with the Department of Defense that will result in the sharing of data, with the States and the Social Security Administration, regarding deaths of United States military personnel and the birth and death of their dependents.

(7) Not later than 1 year after the date of enactment of this Act, establish a process with the Department of State to improve registration, notification, and the sharing of data with the States and the Social Security Administration, regarding births and deaths of United States citizens abroad.

(8) Not later than 3 years after the date of establishment of databases provided for under this section, require States to record and retain electronic records of pertinent identification information collected from requestors who are not the registrants.

(9) Not later than 6 months after the date of enactment of this Act, submit to Congress, a report on whether there is a need for Federal laws to address penalties for fraud and misuse of vital records and whether violations are sufficiently enforced.

SEC. 3065. ELECTRONIC VERIFICATION OF VITAL EVENTS.

(a) LEAD AGENCY.—The Secretary shall lead the implementation of electronic verification of a person's birth and death.

(b) REGULATIONS.—In carrying out subsection (a), the Secretary shall issue regulations to establish a means by which authorized Federal and State agency users with a single interface will be able to generate an electronic query to any participating vital records jurisdiction throughout the Nation to verify the contents of a paper birth certificate. Pursuant to the regulations, an electronic response from the participating vital records jurisdiction as to whether there is a birth record in their database that matches the paper birth certificate will be returned to the user, along with an indication if the matching birth record has been flagged "deceased". The regulations shall take effect not later than 5 years after the date of enactment of this Act.

SEC. 3066. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this chapter.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this chapter.

SEC. 3067. AUTHORITY.

(a) PARTICIPATION WITH FEDERAL AGENCIES AND STATES.—All authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by the Secretary, with the concurrence of the Secretary of Health and Human Services and in consultation with State vital statistics offices and appropriate Federal agencies.

(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 3063(a)(1) if the State provides adequate justification for noncompliance.

Chapter 3—Measures To Enhance Privacy and Integrity of Social Security Account Numbers

SEC. 3071. PROHIBITION OF THE DISPLAY OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATIONS.

(a) IN GENERAL.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(1) by inserting "(I)" after "(vi)"; and

(2) by adding at the end the following new subclause:

"(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any deriva-

tive of such number) on any driver's license or motor vehicle registration or any other document issued by such State or political subdivision to an individual for purposes of identification of such individual or include on any such license, registration, or other document a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to licenses, registrations, and other documents issued or reissued after 1 year after the date of the enactment of this Act.

SEC. 3072. INDEPENDENT VERIFICATION OF BIRTH RECORDS PROVIDED IN SUPPORT OF APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.

(a) APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.—Section 205(c)(2)(B)(ii) of the Social Security Act (42 U.S.C. 405(c)(2)(B)(ii)) is amended—

(1) by inserting "(I)" after "(ii)"; and

(2) by adding at the end the following new subclause:

"(II) With respect to an application for a social security account number for an individual, other than for purposes of enumeration at birth, the Commissioner shall require independent verification of any birth record provided by the applicant in support of the application. The Commissioner may provide by regulation for reasonable exceptions from the requirement for independent verification under this subclause in any case in which the Commissioner determines there is minimal opportunity for fraud.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to applications filed after 270 days after the date of the enactment of this Act.

(c) STUDY REGARDING APPLICATIONS FOR REPLACEMENT SOCIAL SECURITY CARDS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to test the feasibility and cost effectiveness of verifying all identification documents submitted by an applicant for a replacement social security card. As part of such study, the Commissioner shall determine the feasibility of, and the costs associated with, the development of appropriate electronic processes for third party verification of any such identification documents which are issued by agencies and instrumentalities of the Federal Government and of the States (and political subdivisions thereof).

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under paragraph (1). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for verifying identification documents submitted by applicants for replacement social security cards.

SEC. 3073. ENUMERATION AT BIRTH.

(a) IMPROVEMENT OF APPLICATION PROCESS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent—

(A) the assignment of social security account numbers to unnamed children;

(B) the issuance of more than 1 social security account number to the same child; and

(C) other opportunities for fraudulently obtaining a social security account number.

(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner shall transmit to each House of the Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

(b) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. Such study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under paragraph (1). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for enumeration at birth.

SEC. 3074. STUDY RELATING TO USE OF PHOTOGRAPHIC IDENTIFICATION IN CONNECTION WITH APPLICATIONS FOR BENEFITS, SOCIAL SECURITY ACCOUNT NUMBERS, AND SOCIAL SECURITY CARDS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to—

(1) determine the best method of requiring and obtaining photographic identification of applicants for old-age, survivors, and disability insurance benefits under title II of the Social Security Act, for a social security account number, or for a replacement social security card, and of providing for reasonable exceptions to any requirement for photographic identification of such applicants that may be necessary to promote efficient and effective administration of such title, and

(2) evaluate the benefits and costs of instituting such a requirement for photographic identification, including the degree to which the security and integrity of the old-age, survivors, and disability insurance program would be enhanced.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under subsection (a). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary relating to requirements for photographic identification of applicants described in subsection (a).

SEC. 3075. RESTRICTIONS ON ISSUANCE OF MULTIPLE REPLACEMENT SOCIAL SECURITY CARDS.

(a) IN GENERAL.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended by adding at the end the following new sentence: "The Commissioner shall restrict the issuance of multiple replacement social security cards to any individual to 3 per year and to 10 for the life of the individual, except in any case in which the Commissioner determines there is minimal opportunity for fraud.".

(b) REGULATIONS AND EFFECTIVE DATE.—The Commissioner of Social Security shall issue regulations under the amendment made by subsection (a) not later than 1 year after the date of the enactment of this Act. Systems controls developed by the Commissioner pursuant to such amendment shall take effect upon the earlier of the issuance of such regulations or the end of such 1-year period.

SEC. 3076. STUDY RELATING TO MODIFICATION OF THE SOCIAL SECURITY ACCOUNT NUMBERING SYSTEM TO SHOW WORK AUTHORIZATION STATUS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall undertake a study to examine the best method of modifying the social security account number assigned to individuals who—

(1) are not citizens of the United States,

(2) have not been admitted for permanent residence, and

(3) are not authorized by the Secretary of Homeland Security to work in the United States, or are so authorized subject to one or more restrictions,

so as to include an indication of such lack of authorization to work or such restrictions on such an authorization.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under this section. Such report shall include the Commissioner's recommendations of feasible options for modifying the social security account number in the manner described in subsection (a).

Subtitle C—Targeting Terrorist Travel

SEC. 3081. STUDIES ON MACHINE-READABLE PASSPORTS AND TRAVEL HISTORY DATABASE.

(a) IN GENERAL.—Not later than May 31, 2005, the Comptroller General of the United States, the Secretary of State, and the Secretary of Homeland Security each

shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate the results of a separate study on the subjects described in subsection (c).

(b) STUDY.—The study submitted by the Secretary of State under subsection (a) shall be completed by the Office of Visa and Passport Control of the Department of State, in coordination with the appropriate officials of the Department of Homeland Security.

(c) CONTENTS.—The studies described in subsection (a) shall examine the feasibility, cost, potential benefits, and relative importance to the objectives of tracking suspected terrorists' travel, and apprehending suspected terrorists, of each of the following:

(1) Requiring nationals of all countries to present machine-readable, tamper-resistant passports that incorporate biometric and document authentication identifiers.

(2) Creation of a database containing information on the lifetime travel history of each foreign national or United States citizen who might seek to enter the United States or another country at any time, in order that border and visa issuance officials may ascertain the travel history of a prospective entrant by means other than a passport.

(d) INCENTIVES.—The studies described in subsection (a) shall also make recommendations on incentives that might be offered to encourage foreign nations to participate in the initiatives described in paragraphs (1) and (2) of subsection (c).

SEC. 3082. EXPANDED PREINSPECTION AT FOREIGN AIRPORTS.

(a) IN GENERAL.—Section 235A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)) is amended—

(1) by striking "October 31, 2000," and inserting "January 1, 2008,";

(2) by striking "5 additional" and inserting "up to 25 additional";

(3) by striking "number of aliens" and inserting "number of inadmissible aliens, especially aliens who are potential terrorists,";

(4) by striking "who are inadmissible to the United States." and inserting a period; and

(5) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security".

(b) REPORT.—Not later than June 30, 2006, the Secretary of Homeland Security and the Secretary of State shall report to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate on the progress being made in implementing the amendments made by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security to carry out the amendments made by subsection (a)—

(1) $24,000,000 for fiscal year 2005;

(2) $48,000,000 for fiscal year 2006; and

(3) $97,000,000 for fiscal year 2007.

SEC. 3083. IMMIGRATION SECURITY INITIATIVE.

(a) IN GENERAL.—Section 235A(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended—

(1) in the subsection heading, by inserting "AND IMMIGRATION SECURITY INITIATIVE" after "PROGRAM"; and

(2) by adding at the end the following:

"Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.".

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security to carry out the amendments made by subsection (a)—

(1) $25,000,000 for fiscal year 2005;

(2) $40,000,000 for fiscal year 2006; and

(3) $40,000,000 for fiscal year 2007.

SEC. 3084. RESPONSIBILITIES AND FUNCTIONS OF CONSULAR OFFICERS.

(a) INCREASED NUMBER OF CONSULAR OFFICERS.—The Secretary of State, in each of fiscal years 2006 through 2009, may increase by 150 the number of positions for consular officers above the number of such positions for which funds were allotted for the preceding fiscal year.

(b) LIMITATION ON USE OF FOREIGN NATIONALS FOR NONIMMIGRANT VISA SCREENING.—Section 222(d) of the Immigration and Nationality Act (8 U.S.C. 1202(d)) is amended by adding at the end the following:
"All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.".

(c) TRAINING FOR CONSULAR OFFICERS IN DETECTION OF FRAUDULENT DOCUMENTS.—Section 305(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1734(a)) is amended by adding at the end the following: "As part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.".

(d) ASSIGNMENT OF ANTI-FRAUD SPECIALISTS.—

(1) SURVEY REGARDING DOCUMENT FRAUD.—The Secretary of State, in coordination with the Secretary of Homeland Security, shall conduct a survey of each diplomatic and consular post at which visas are issued to assess the extent to which fraudulent documents are presented by visa applicants to consular officers at such posts.

(2) PLACEMENT OF SPECIALIST.—Not later than July 31, 2005, the Secretary shall, in coordination with the Secretary of Homeland Security, identify 100 of such posts that experience the greatest frequency of presentation of fraudulent documents by visa applicants. The Secretary shall place in each such post at least one full-time anti-fraud specialist employed by the Department of State to assist the consular officers at each such post in the detection of such fraud.

SEC. 3085. INCREASE IN PENALTIES FOR FRAUD AND RELATED ACTIVITY.

Section 1028 of title 18, United States Code, relating to penalties for fraud and related activity in connection with identification documents and information, is amended—

(1) in subsection (b)(1)(A)(i), by striking "issued by or under the authority of the United States" and inserting the following: "as described in subsection (d)";

(2) in subsection (b)(2), by striking "three years" and inserting "six years";

(3) in subsection (b)(3), by striking "20 years" and inserting "25 years";

(4) in subsection (b)(4), by striking "25 years" and inserting "30 years"; and

(5) in subsection (c)(1), by inserting after "United States" the following: "Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization,".

SEC. 3086. CRIMINAL PENALTY FOR FALSE CLAIM TO CITIZENSHIP.

Section 1015 of title 18, United States Code, is amended—

(1) by striking the dash at the end of subsection (f) and inserting "; or"; and

(2) by inserting after subsection (f) the following:

"(g) Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to enter into, or remain in, the United States—".

SEC. 3087. ANTITERRORISM ASSISTANCE TRAINING OF THE DEPARTMENT OF STATE.

(a) LIMITATION.—Notwithstanding any other provision of law, the Secretary of State shall ensure, subject to subsection (b), that the Antiterrorism Assistance Training (ATA) program of the Department of State (or any successor or related program) under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) (or other relevant provisions of law) is carried out primarily to provide training to host nation security services for the specific purpose of ensuring the physical security and safety of United States Government facilities and personnel abroad (as well as foreign dignitaries and training related to the protection of such dignitaries), including security detail training and offenses related to passport or visa fraud.

(b) EXCEPTION.—The limitation contained in subsection (a) shall not apply, and the Secretary of State may expand the ATA program to include other types of antiterrorism assistance training, if the Secretary first obtains the approval of the Attorney General and provides written notification of such proposed expansion to the appropriate congressional committees.

(c) DEFINITION.—In this section, the term "appropriate congressional committees" means—

(1) the Committee on International Relations and the Committee on the Judiciary of the House of Representatives; and

(2) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

SEC. 3088. INTERNATIONAL AGREEMENTS TO TRACK AND CURTAIL TERRORIST TRAVEL THROUGH THE USE OF FRAUDULENTLY OBTAINED DOCUMENTS.

(a) FINDINGS.—Congress finds the following:

(1) International terrorists travel across international borders to raise funds, recruit members, train for operations, escape capture, communicate, and plan and carry out attacks.

(2) The international terrorists who planned and carried out the attack on the World Trade Center on February 26, 1993, the attack on the embassies of the United States in Kenya and Tanzania on August 7, 1998, the attack on the USS Cole on October 12, 2000, and the attack on the World Trade Center and the Pentagon on September 11, 2001, traveled across international borders to plan and carry out these attacks.

(3) The international terrorists who planned other attacks on the United States, including the plot to bomb New York City landmarks in 1993, the plot to bomb the New York City subway in 1997, and the millennium plot to bomb Los Angeles International Airport on December 31, 1999, traveled across international borders to plan and carry out these attacks.

(4) Many of the international terrorists who planned and carried out large-scale attacks against foreign targets, including the attack in Bali, Indonesia, on October 11, 2002, and the attack in Madrid, Spain, on March 11, 2004, traveled across international borders to plan and carry out these attacks.

(5) Throughout the 1990s, international terrorists, including those involved in the attack on the World Trade Center on February 26, 1993, the plot to bomb New York City landmarks in 1993, and the millennium plot to bomb Los Angeles International Airport on December 31, 1999, traveled on fraudulent passports and often had more than one passport.

(6) Two of the September 11, 2001, hijackers were carrying passports that had been manipulated in a fraudulent manner and several other hijackers whose passports did not survive the attacks on the World Trade Center and Pentagon were likely to have carried passports that were similarly manipulated.

(7) The National Commission on Terrorist Attacks upon the United States, (commonly referred to as the 9/11 Commission), stated that "Targeting travel is at least as powerful a weapon against terrorists as targeting their money.".

(b) INTERNATIONAL AGREEMENTS TO TRACK AND CURTAIL TERRORIST TRAVEL.—

(1) INTERNATIONAL AGREEMENT ON LOST, STOLEN, OR FALSIFIED DOCUMENTS.—The President shall lead efforts to track and curtail the travel of terrorists by supporting the drafting, adoption, and implementation of international agreements, and by supporting the expansion of existing international agreements, to track and stop international travel by terrorists and other criminals through the use of lost, stolen, or falsified documents to augment existing United Nations and other international anti-terrorism efforts.

(2) CONTENTS OF INTERNATIONAL AGREEMENT.—The President shall seek, in the appropriate fora, the drafting, adoption, and implementation of an effective international agreement requiring—

(A) the establishment of a system to share information on lost, stolen, and fraudulent passports and other travel documents for the purposes of preventing the undetected travel of persons using such passports and other travel documents that were obtained improperly;

(B) the establishment and implementation of a real-time verification system of passports and other travel documents with issuing authorities;

(C) the assumption of an obligation by countries that are parties to the agreement to share with officials at ports of entry in any such country information relating to lost, stolen, and fraudulent passports and other travel documents;

(D) the assumption of an obligation by countries that are parties to the agreement—

(i) to criminalize—

(I) the falsification or counterfeiting of travel documents or breeder documents for any purpose;

(II) the use or attempted use of false documents to obtain a visa or cross a border for any purpose;

(III) the possession of tools or implements used to falsify or counterfeit such documents;

(IV) the trafficking in false or stolen travel documents and breeder documents for any purpose;

(V) the facilitation of travel by a terrorist; and

(VI) attempts to commit, including conspiracies to commit, the crimes specified above;

(ii) to impose significant penalties so as to appropriately punish violations and effectively deter these crimes; and

(iii) to limit the issuance of citizenship papers, passports, identification documents, and the like to persons whose identity is proven to the issuing authority, who have a bona fide entitlement to or need for such documents, and who are not issued such documents principally on account of a disproportional payment made by them or on their behalf to the issuing authority;

(E) the provision of technical assistance to State Parties to help them meet their obligations under the convention;

(F) the establishment and implementation of a system of self-assessments and peer reviews to examine the degree of compliance with the convention; and

(G) an agreement that would permit immigration and border officials to confiscate a lost, stolen, or falsified passport at ports of entry and permit the traveler to return to the sending country without being in possession of the lost, stolen, or falsified passport, and for the detention and investigation of such traveler upon the return of the traveler to the sending country.

(3) INTERNATIONAL CIVIL AVIATION ORGANIZATION.—The United States shall lead efforts to track and curtail the travel of terrorists by supporting efforts at the International Civil Aviation Organization to continue to strengthen the security features of passports and other travel documents.

(c) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, and at least annually thereafter, the President shall submit to the appropriate congressional committees a report on progress toward achieving the goals described in subsection (b).

(2) TERMINATION.—Paragraph (1) shall cease to be effective when the President certifies to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the goals described in subsection (b) have been fully achieved.

SEC. 3089. INTERNATIONAL STANDARDS FOR TRANSLATION OF NAMES INTO THE ROMAN ALPHABET FOR INTERNATIONAL TRAVEL DOCUMENTS AND NAME-BASED WATCHLIST SYSTEMS.

(a) FINDINGS.—Congress finds that—

(1) the current lack of a single convention for translating Arabic names enabled some of the 19 hijackers of aircraft used in the terrorist attacks against the United States that occurred on September 11, 2001, to vary the spelling of their names to defeat name-based terrorist watchlist systems and to make more difficult any potential efforts to locate them; and

(2) although the development and utilization of terrorist watchlist systems using biometric identifiers will be helpful, the full development and utilization of such systems will take several years, and name-based terrorist watchlist systems will always be useful.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should seek to enter into an international agreement to modernize and improve standards for the translation of names into the Roman alphabet in order to ensure one common spelling for such names for international travel documents and name-based watchlist systems.

SEC. 3090. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) PLAN AND REPORT.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system required by applicable sections of—

(A) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208);

(B) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–205);

(C) the Visa Waiver Permanent Program Act (Public Law 106–396);

(D) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173); and

(E) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107–56).

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;

(ii) a listing of ports of entry with biometric exit data systems in use;

(iii) a listing of databases and data systems with which the automated entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the entry and exit data system; and

(D) a description of plans for improved or added interoperability with any other databases or data systems.

(c) INTEGRATION REQUIREMENT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall integrate the biometric entry and exit data system with all databases and data systems maintained by the United States Citizenship and Immigration Services that process or contain information on aliens.

(d) MAINTAINING ACCURACY AND INTEGRITY OF ENTRY AND EXIT DATA SYSTEM.—

(1) IN GENERAL.—The Secretary, in consultation with other appropriate agencies, shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system, and databases and data systems linked to the entry and exit data system, that ensure the accuracy and integrity of the data.

(2) REQUIREMENTS.—The rules, guidelines, policies, and procedures established under paragraph (1) shall—

(A) incorporate a simple and timely method for—

(i) correcting errors; and

(ii) clarifying information known to cause false hits or misidentification errors; and

(B) include procedures for individuals to seek corrections of data contained in the data systems.

(e) EXPEDITING REGISTERED TRAVELERS ACROSS INTERNATIONAL BORDERS.—

(1) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(A) expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority; and

(B) the process of expediting known travelers across the border can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) DEFINITION.—The term "registered traveler program" means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) REGISTERED TRAVEL PLAN.—

(A) IN GENERAL.—As soon as is practicable, the Secretary shall develop and implement a plan to expedite the processing of registered travelers who

enter and exit the United States through a single registered traveler program.

(B) INTEGRATION.—The registered traveler program developed under this paragraph shall be integrated into the automated biometric entry and exit data system described in this section.

(C) REVIEW AND EVALUATION.—In developing the program under this paragraph, the Secretary shall—

(i) review existing programs or pilot projects designed to expedite the travel of registered travelers across the borders of the United States;

(ii) evaluate the effectiveness of the programs described in clause (i), the costs associated with such programs, and the costs to travelers to join such programs; and

(iii) increase research and development efforts to accelerate the development and implementation of a single registered traveler program.

(4) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Congress a report describing the Department's progress on the development and implementation of the plan required by this subsection.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 3091. BIOMETRIC ENTRY-EXIT SCREENING SYSTEM.

(a) INTEGRATED BIOMETRIC ENTRY-EXIT SCREENING SYSTEM.—With respect to the biometric entry/exit data system referred to in subsections (a) and (b), such systems shall—

(1) Ensure that the system's tracking capabilities encompass data related to all immigration benefits processing, including visa applications with the Department of State, immigration related filings with the Department of Labor, cases pending before the Executive Office for Immigration review, and matters pending or under investigation before the Department of Homeland Security.

(2) Utilize a biometric based identity number tied to an applicant's biometric algorithm established under the entry/exit system to track all immigration related matters concerning the applicant.

(3) Provide that all information about an applicant's immigration related history, including entry/exit history, can be queried through electronic means. Database access and usage guidelines shall include stringent safeguards to prevent misuse of data.

(4) Provide real time updates to the database described in paragraph (3) including pertinent data from all agencies referenced in paragraph (1).

(5) Limit access to the database described in paragraph (4) (and any other database used for tracking immigration related processing and/or entry/exit) to personnel explicitly authorized to do so, and that any such access may be ascertained by authorized persons by review of the person's access authorization code or number.

(6) Provide continuing education in counterterrorism techniques, tools, and methods for all Federal personnel employed in the evaluation of immigration documents and immigration-related policy.

(b) ENTRY-EXIT SYSTEM GOALS.—The Department of Homeland Security shall continue to implement the system described in subsections (a) and (b), in such a way that it fulfills the following goals:

(1) Serves as a vital counterterrorism tool.

(2) Screens travelers efficiently and in a welcoming manner.

(3) Provides inspectors and related personnel with adequate real-time information.

(4) Ensures flexibility of training and security protocols to most effectively comply with security mandates.

(5) Integrates relevant databases and plans for database modifications to address volume increase and database usage.

(6) Improves database search capacities by utilizing language algorithms to detect alternate names.

(c) DEDICATED SPECIALISTS AND FRONT LINE PERSONNEL TRAINING.—In implementing the provisions of subsections (a), (b), and (c), the Department of Homeland Security and the Department of State shall—

(1) develop cross-training programs that focus on the scope and procedures of the entry/exit system;

(2) provide extensive community outreach and education on the entry/exit system procedures;

(3) provide clear and consistent eligibility guidelines for applicants in low-risk traveler programs; and

(4) establish ongoing training modules on immigration law to improve adjudications at our ports of entry, consulates, and embassies.

(d) INFORMATION ACCURACY STANDARDS.—

(1) Any information placed in the entry/exit database shall be entered by authorized officers in compliance with established procedures, as set forth in section 407 of this Act, that guarantee the identification of the person making the database entry.

(2) The Secretary of Homeland Security, the Secretary of State, and the Attorney General, after consultation with directors of the relevant intelligence agencies, shall standardize the information and data collected from foreign nationals as well as the procedures utilized to collect such data to ensure that the information is consistent and of value to officials accessing that data across multiple agencies.

(e) ACCESSIBILITY.—The Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency that possesses authority to enter data related to the immigration status of foreign nationals, including lawful permanent resident aliens, or where such information could serve to impede lawful admission of United States citizens to the United States, shall each establish guidelines related to data entry procedures. Such guidelines shall—

(1) strictly limit the agency personnel authorized to enter data into the system;

(2) identify classes of information to be designated as temporary or permanent entries, with corresponding expiration dates for temporary entries; and

(3) identify classes of prejudicial information requiring additional authority of supervisory personnel prior to entry.

(f) SYSTEM ADAPTABILITY.—

(1) Each agency authorized to enter data related to the immigration status of any persons identified in subsection (b) above shall develop and implement system protocols to—

(A) correct erroneous data entries in a timely and effective manner;

(B) clarify information known to cause false hits or misidentification errors; and

(C) update all relevant information that is dispositive to the adjudicatory or admission process.

(2) The President or agency director so designated by the President shall establish a clearinghouse bureau as part of the Department of Homeland Security to centralize and streamline the process through which members of the public can seek corrections to erroneous or inaccurate information related to immigration status, or which otherwise impedes lawful admission to the United States contained in agency databases. Such process shall include specific time schedules for reviewing data correction requests, rendering decisions on such requests, and implementing appropriate corrective action in a timely manner.

(g) TRAINING.—Agency personnel authorized to enter data pursuant to subsection (b)(1) shall undergo extensive training in immigration law and procedure.

(h) IMPLEMENTATION AUDIT.—The Secretary of the Department of Homeland Security shall issue a report to Congress within 6 months of enactment of this Act that details activities undertaken to date to develop an entry-exit system, areas in which the system currently does not achieve the mandates set forth by this section, and the funding, infrastructure, technology and other factors needed to complete the system, as well as a detailed time frame in which the completion of the system will be achieved.

(i) REPORTS.—

(1) The Secretaries of the Departments of State and Homeland Security jointly shall report biannually to Congress on: Current infrastructure and staffing at each port of entry and each consular post, numbers of immigrant and nonimmigrant visas issued, specify the numbers of individuals subject to expedited removal at the ports of entry as well as within 100 miles of the United States border, the plan for enhanced database review at entry, the number of suspected terrorists and criminals intercepted utilizing the entry/exit system and the moneys spent in the preceding fiscal year to achieve the mandates of this section, areas in which they failed to achieve these mandates, and the steps they are taking to address these deficiencies. For ports of entry, similar information shall be provided including the number of I–94s issued, immigrant visa admissions made, and nonimmigrant admissions.

(2) No later than 120 days after enactment of this Act, the Secretary of Homeland Security and the Secretary of State, after consultation with the Director

of the National Institute of Standards and Technology and the Commission on Interoperable Data Sharing, shall issue a report addressing the following areas:

(A) The status of agency compliance with the mandates set forth in section 202 ("Interoperable Law Enforcement and Intelligence Data System with Name-Matching Capacity and Training") of the Enhanced Border Security and Visa Entry Reform Act (Public Law 107–173).

(B) The status of agency compliance with section 201(c)(3) ("Protections Regarding Information and Uses Thereof") of the Enhanced Border Security and Visa Entry Reform Act (Public Law 107–173).

(3) No later than 1 year after enactment of this Act, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency bound by the mandates in this Act, shall issue both individual status reports and a joint status report detailing compliance with each mandate contained in this section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 3092. ENHANCED RESPONSIBILITIES OF THE COORDINATOR FOR COUNTERTERRORISM.

(a) DECLARATION OF UNITED STATES POLICY.—Congress declares that it shall be the policy of the United States to—

(1) make combating terrorist travel and those who assist them a priority for the United States counterterrorism policy; and

(2) ensure that the information relating to individuals who help facilitate terrorist travel by creating false passports, visas, documents used to obtain such travel documents, and other documents are fully shared within the United States Government and, to the extent possible, with and from foreign governments, in order to initiate United States and foreign prosecutions of such individuals.

(b) AMENDMENT.—Section 1(e)(2) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(e)(2)) is amended by adding at the end the following:

"(C) ADDITIONAL DUTIES RELATING TO TERRORIST TRAVEL.—In addition to the principal duties of the Coordinator described in subparagraph (B), the Coordinator shall analyze methods used by terrorists to travel internationally, develop policies with respect to curtailing terrorist travel, and coordinate such policies with the appropriate bureaus and other entities of the Department of State, other United States Government agencies, the Human Trafficking and Smuggling Center, and foreign governments.".

SEC. 3093. ESTABLISHMENT OF OFFICE OF VISA AND PASSPORT SECURITY IN THE DEPARTMENT OF STATE.

(a) ESTABLISHMENT.—There is established within the Bureau of Diplomatic Security of the Department of State an Office of Visa and Passport Security (in this section referred to as the "Office").

(b) HEAD OF OFFICE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the head of the Office shall be an individual who shall have the rank and status of Deputy Assistant Secretary of State for Diplomatic Security (in this section referred to as the "Deputy Assistant Secretary").

(2) RECRUITMENT.—The Under Secretary of State for Management shall chose the Deputy Assistant Secretary from among individuals who are Diplomatic Security Agents.

(3) QUALIFICATIONS.—The Diplomatic Security Agent chosen to serve as the Deputy Assistant Secretary shall have expertise and experience in investigating and prosecuting visa and passport fraud.

(c) DUTIES.—

(1) PREPARATION OF STRATEGIC PLAN.—

(A) IN GENERAL.—The Deputy Assistant Secretary, in coordination with the appropriate officials of the Department of Homeland Security, shall ensure the preparation of a strategic plan to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, use, or other similar activity—

(i) of a United States visa or United States passport;

(ii) of documents intended to help fraudulently procure a United States visa or United States passport, or other documents intended to gain unlawful entry into the United States; or

(iii) of passports and visas issued by foreign countries intended to gain unlawful entry into the United States.

(B) EMPHASIS.—Such plan shall—

(i) focus particular emphasis on individuals and organizations that may have links to domestic terrorist organizations or foreign terrorist

organizations (as such term is defined in Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189));

(ii) require the development of a strategic training course under the Antiterrorism Assistance Training (ATA) program of the Department of State (or any successor or related program) under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) (or other relevant provisions of law) to train participants in the identification of fraudulent documents and the forensic detection of such documents which may be used to obtain unlawful entry into the United States; and

(iii) determine the benefits and costs of providing technical assistance to foreign governments to ensure the security of passports, visas, and related documents and to investigate, arrest, and prosecute individuals who facilitate travel by the creation of false passports and visas, documents to obtain such passports and visas, and other types of travel documents.

(2) DUTIES OF OFFICE.—The Office shall have the following duties:

(A) ANALYSIS OF METHODS.—Analyze methods used by terrorists to travel internationally, particularly the use of false or altered travel documents to illegally enter foreign countries and the United States, and advise the Bureau of Consular Affairs on changes to the visa issuance process that could combat such methods, including the introduction of new technologies into such process.

(B) IDENTIFICATION OF INDIVIDUALS AND DOCUMENTS.—Identify, in cooperation with the Human Trafficking and Smuggling Center, individuals who facilitate travel by the creation of false passports and visas, documents used to obtain such passports and visas, and other types of travel documents, and ensure that the appropriate agency is notified for further investigation and prosecution or, in the case of such individuals abroad for which no further investigation or prosecution is initiated, ensure that all appropriate information is shared with foreign governments in order to facilitate investigation, arrest, and prosecution of such individuals.

(C) IDENTIFICATION OF FOREIGN COUNTRIES NEEDING ASSISTANCE.—Identify foreign countries that need technical assistance, such as law reform, administrative reform, prosecutorial training, or assistance to police and other investigative services, to ensure passport, visa, and related document security and to investigate, arrest, and prosecute individuals who facilitate travel by the creation of false passports and visas, documents used to obtain such passports and visas, and other types of travel documents.

(D) INSPECTION OF APPLICATIONS.—Randomly inspect visa and passport applications for accuracy, efficiency, and fraud, especially at high terrorist threat posts, in order to prevent a recurrence of the issuance of visas to those who submit incomplete, fraudulent, or otherwise irregular or incomplete applications.

(3) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Deputy Assistant Secretary shall submit to Congress a report containing—

(A) a description of the strategic plan prepared under paragraph (1); and

(B) an evaluation of the feasibility of establishing civil service positions in field offices of the Bureau of Diplomatic Security to investigate visa and passport fraud, including an evaluation of whether to allow diplomatic security agents to convert to civil service officers to fill such positions.

Subtitle D—Terrorist Travel

SEC. 3101. INFORMATION SHARING AND COORDINATION.

The Secretary of Homeland Security shall establish a mechanism to—

(1) ensure the coordination and dissemination of terrorist travel intelligence and operational information among the appropriate agencies within the Department of Homeland Security, including the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, the Bureau of Citizenship and Immigration Services, the Transportation Security Administration, the Coast Guard, and other agencies as directed by the Secretary; and

(2) ensure the sharing of terrorist travel intelligence and operational information with the Department of State, the National Counterterrorism Center, and other appropriate Federal agencies.

SEC. 3102. TERRORIST TRAVEL PROGRAM.

The Secretary of Homeland Security shall establish a program to—

(1) analyze and utilize information and intelligence regarding terrorist travel tactics, patterns, trends, and practices; and

(2) disseminate that information to all front-line Department of Homeland Security personnel who are at ports of entry or between ports of entry, to immigration benefits offices, and, in coordination with the Secretary of State, to appropriate individuals at United States embassies and consulates.

SEC. 3103. TRAINING PROGRAM.

(a) REVIEW, EVALUATION, AND REVISION OF EXISTING TRAINING PROGRAMS.—The Secretary of Homeland Security shall—

(1) review and evaluate the training currently provided to Department of Homeland Security personnel and, in consultation with the Secretary of State, relevant Department of State personnel with respect to travel and identity documents, and techniques, patterns, and trends associated with terrorist travel; and

(2) develop and implement a revised training program for border, immigration, and consular officials in order to teach such officials how to effectively detect, intercept, and disrupt terrorist travel.

(b) REQUIRED TOPICS OF REVISED PROGRAMS.—The training program developed under subsection (a)(2) shall include training in the following areas:

(1) Methods for identifying fraudulent and genuine travel documents.

(2) Methods for detecting terrorist indicators on travel documents and other relevant identity documents.

(3) Recognizing travel patterns, tactics, and behaviors exhibited by terrorists.

(4) Effectively utilizing information contained in databases and data systems available to the Department of Homeland Security.

(5) Other topics determined to be appropriate by the Secretary of Homeland Security in consultation with the Secretary of State or the National Intelligence Director.

SEC. 3104. TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.

(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Congress a plan to ensure that the Department of Homeland Security and the Department of State acquire and deploy, to all consulates, ports of entry, and immigration benefits offices, technologies that facilitate document authentication and the detection of potential terrorist indicators on travel documents.

(b) INTEROPERABILITY REQUIREMENT.—To the extent possible, technologies to be acquired and deployed under the plan shall be compatible with current systems used by the Department of Homeland Security to detect and identify fraudulent documents and genuine documents.

(c) PASSPORT SCREENING.—The plan shall address the feasibility of using such technologies to screen passports submitted for identification purposes to a United States consular, border, or immigration official.

Subtitle E—Maritime Security Requirements

SEC. 3111. DEADLINES FOR IMPLEMENTATION OF MARITIME SECURITY REQUIREMENTS.

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—Section 70103(a) of the 46, United States Code, is amended by striking "The Secretary" and inserting "Not later than December 31, 2004, the Secretary".

(b) FACILITY AND VESSEL VULNERABILITY ASSESSMENTS.—Section 70102(b)(1) of the 46, United States Code, is amended by striking ", the Secretary" and inserting "and by not later than December 31, 2004, the Secretary".

(c) TRANSPORTATION SECURITY CARD REGULATIONS.—Section 70105(a) of the 46, United States Code, is amended by striking "The Secretary" and inserting "Not later than December 31, 2004, the Secretary".

TITLE IV—INTERNATIONAL COOPERATION AND COORDINATION

Subtitle A—Attack Terrorists and Their Organizations

CHAPTER 1—PROVISIONS RELATING TO TERRORIST SANCTUARIES

SEC. 4001. UNITED STATES POLICY ON TERRORIST SANCTUARIES.

It is the sense of Congress that it should be the policy of the United States—

(1) to identify and prioritize foreign countries that are or that could be used as terrorist sanctuaries;

(2) to assess current United States resources being provided to such foreign countries;

(3) to develop and implement a coordinated strategy to prevent terrorists from using such foreign countries as sanctuaries; and

(4) to work in bilateral and multilateral fora to prevent foreign countries from being used as terrorist sanctuaries.

SEC. 4002. REPORTS ON TERRORIST SANCTUARIES.

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the President shall transmit to Congress a report that describes a strategy for addressing and, where possible, eliminating terrorist sanctuaries.

(2) CONTENT.—The report required under this subsection shall include the following:

(A) A list that prioritizes each actual and potential terrorist sanctuary and a description of activities in the actual and potential sanctuaries.

(B) An outline of strategies for preventing the use of, disrupting, or ending the use of such sanctuaries.

(C) A detailed description of efforts, including an assessment of successes and setbacks, by the United States to work with other countries in bilateral and multilateral fora to address or eliminate each actual or potential terrorist sanctuary and disrupt or eliminate the security provided to terrorists by each such sanctuary.

(D) A description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries.

(b) SUBSEQUENT REPORTS.—

(1) REQUIREMENT OF REPORTS.—Section 140(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)(1)) is amended—

(A) by striking "(1)" and inserting "(1)(A)";

(B) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively;

(C) in subparagraph (A)(iii) (as redesignated), by adding "and" at the end; and

(D) by adding at the end the following:

"(B) detailed assessments with respect to each foreign country whose territory is being used or could potentially be used as a sanctuary for terrorists or terrorist organizations;".

(2) PROVISIONS TO BE INCLUDED IN REPORT.—Section 140(b) of such Act (22 U.S.C. 2656f(b)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsection (a)(1)" and inserting "subsection (a)(1)(A)"; and

(ii) by striking "and" at the end;

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

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

"(2) with respect to subsection (a)(1)(B)—

"(A) the extent of knowledge by the government of the country with respect to terrorist activities in the territory of the country; and

"(B) the actions by the country—

"(i) to eliminate each terrorist sanctuary in the territory of the country;

"(ii) to cooperate with United States antiterrorism efforts; and

"(iii) to prevent the proliferation of and trafficking in weapons of mass destruction in and through the territory of the country;";

(D) by striking the period at the end of paragraph (3) (as redesignated) and inserting a semicolon; and

(E) by inserting after paragraph (3) (as redesignated) the following:

"(4) a strategy for addressing and, where possible, eliminating terrorist sanctuaries that shall include—

"(A) a description of actual and potential terrorist sanctuaries, together with an assessment of the priorities of addressing and eliminating such sanctuaries;

"(B) an outline of strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries;

"(C) a description of efforts by the United States to work with other countries in bilateral and multilateral fora to address or eliminate actual or potential terrorist sanctuaries and disrupt or eliminate the security provided to terrorists by such sanctuaries; and

"(D) a description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries;

"(5) an update of the information contained in the report required to be transmitted to Congress pursuant to section 4002(a)(2) of the 9/11 Recommendations Implementation Act;

"(6) to the extent practicable, complete statistical information on the number of individuals, including United States citizens and dual nationals, killed, injured, or kidnapped by each terrorist group during the preceding calendar year; and

"(7) an analysis, as appropriate, relating to trends in international terrorism, including changes in technology used, methods and targets of attacks, demographic information on terrorists, and other appropriate information.".

(3) DEFINITIONS.—Section 140(d) of such Act (22 U.S.C. 2656f(d)) is amended—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(4) the term 'territory' and 'territory of the country' means the land, waters, and airspace of the country; and

"(5) the term 'terrorist sanctuary' or 'sanctuary' means an area in the territory of a country that is used by a terrorist group with the express or implied consent of the government of the country—

"(A) to carry out terrorist activities, including training, fundraising, financing, recruitment, and education activities; or

"(B) to provide transit through the country.".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) apply with respect to the report required to be transmitted under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, by April 30, 2006, and by April 30 of each subsequent year.

SEC. 4003. AMENDMENTS TO EXISTING LAW TO INCLUDE TERRORIST SANCTUARIES.

(a) AMENDMENTS.—Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraph (B) as subparagraph (C); and

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

"(B) Any part of the territory of the country is being used as a sanctuary for terrorists or terrorist organizations.";

(2) in paragraph (3), by striking "paragraph (1)(A)" and inserting "subparagraph (A) or (B) of paragraph (1)";

(3) by redesignating paragraph (5) as paragraph (6);

(4) by inserting after paragraph (4) the following:

"(5) A determination made by the Secretary of State under paragraph (1)(B) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate before the proposed rescission would take effect a report certifying that the government of the country concerned —

"(A) is taking concrete, verifiable steps to eliminate each terrorist sanctuary in the territory of the country;

"(B) is cooperating with United States antiterrorism efforts; and

"(C) is taking all appropriate actions to prevent the proliferation of and trafficking in weapons of mass destruction in and through the territory of the country."; and

(5) by inserting after paragraph (6) (as redesignated) the following:

"(7) In this subsection—

"(A) the term 'territory of the country' means the land, waters, and airspace of the country; and

"(B) the term 'terrorist sanctuary' or 'sanctuary' means an area in the territory of a country that is used by a terrorist group with the express or implied consent of the government of the country—

"(i) to carry out terrorist activities, including training, fundraising, financing, recruitment, and education activities; or

"(ii) to provide transit through the country.".

(b) IMPLEMENTATION.—The President shall implement the amendments made by subsection (a) by exercising the authorities the President has under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

CHAPTER 2—OTHER PROVISIONS

SEC. 4011. APPOINTMENTS TO FILL VACANCIES IN ARMS CONTROL AND NONPROLIFERATION ADVISORY BOARD.

(a) REQUIREMENT.—Not later than December 31, 2004, the Secretary of State shall appoint individuals to the Arms Control and Nonproliferation Advisory Board to fill all vacancies in the membership of the Board that exist on the date of the enactment of this Act.

(b) CONSULTATION.—Appointments to the Board under subsection (a) shall be made in consultation with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 4012. REVIEW OF UNITED STATES POLICY ON PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND CONTROL OF STRATEGIC WEAPONS.

(a) REVIEW.—

(1) IN GENERAL.—The Undersecretary of State for Arms Control and International Security shall instruct the Arms Control and Nonproliferation Advisory Board (in this section referred to as the "Advisory Board") to carry out a review of existing policies of the United States relating to the proliferation of weapons of mass destruction and the control of strategic weapons.

(2) COMPONENTS.—The review required under this subsection shall contain at a minimum the following:

(A) An identification of all major deficiencies in existing United States policies relating to the proliferation of weapons of mass destruction and the control of strategic weapons.

(B) Proposals that contain a range of options that if implemented would adequately address any significant threat deriving from the deficiencies in existing United States policies described in subparagraph (A).

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than June 15, 2005, the Advisory Board shall prepare and submit to the Undersecretary of State for Arms Control and International Security an interim report that contains the initial results of the review carried out pursuant to subsection (a).

(2) FINAL REPORT.—Not later than December 1, 2005, the Advisory Board shall prepare and submit to the Undersecretary of State for Arms Control and International Security, and to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, a final report that contains the comprehensive results of the review carried out pursuant to subsection (a).

(c) EXPERTS AND CONSULTANTS.— In carrying out this section, the Advisory Board may procure temporary and intermittent services of experts and consultants, including experts and consultants from nongovernmental organizations, under section 3109(b) of title 5, United States Code.

(d) FUNDING AND OTHER RESOURCES.—The Secretary of State shall provide to the Advisory Board an appropriate amount of funding and other resources to enable the Advisory Board to carry out this section.

SEC. 4013. INTERNATIONAL AGREEMENTS TO INTERDICT ACTS OF INTERNATIONAL TERRORISM.

Section 1(e)(2) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(e)(2)), as amended by section 3091(b), is further amended by adding at the end the following:

"(D) ADDITIONAL DUTIES RELATING TO INTERNATIONAL AGREEMENTS TO INTERDICT ACTS OF INTERNATIONAL TERRORISM.—

"(i) IN GENERAL.—In addition to the principal duties of the Coordinator described in subparagraph (B), the Coordinator, in consultation

with relevant United States Government agencies, shall seek to negotiate on a bilateral basis international agreements under which parties to an agreement work in partnership to address and interdict acts of international terrorism.

"(ii) TERMS OF INTERNATIONAL AGREEMENT.—It is the sense of Congress that—

"(I) each party to an international agreement referred to in clause (i)—

"(aa) should be in full compliance with United Nations Security Council Resolution 1373 (September 28, 2001), other appropriate international agreements relating to antiterrorism measures, and such other appropriate criteria relating to antiterrorism measures;

"(bb) should sign and adhere to a 'Counterterrorism Pledge' and a list of 'Interdiction Principles', to be determined by the parties to the agreement;

"(cc) should identify assets and agree to multilateral efforts that maximizes the country's strengths and resources to address and interdict acts of international terrorism or the financing of such acts;

"(dd) should agree to joint training exercises among the other parties to the agreement; and

"(ee) should agree to the negotiation and implementation of other relevant international agreements and consensus-based international standards; and

"(II) an international agreement referred to in clause (i) should contain provisions that require the parties to the agreement—

"(aa) to identify regions throughout the world that are emerging terrorist threats;

"(bb) to establish terrorism interdiction centers in such regions and other regions, as appropriate;

"(cc) to deploy terrorism prevention teams to such regions, including United States-led teams; and

"(dd) to integrate intelligence, military, and law enforcement personnel from countries that are parties to the agreement in order to work directly with the regional centers described in item (bb) and regional teams described in item (cc).".

SEC. 4014. EFFECTIVE COALITION APPROACH TOWARD DETENTION AND HUMANE TREATMENT OF CAPTURED TERRORISTS.

It is the sense of Congress that the President should pursue by all appropriate diplomatic means with countries that are participating in the Coalition to fight terrorism the development of an effective approach toward the detention and humane treatment of captured terrorists. The effective approach referred to in this section may, as appropriate, draw on Article 3 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva on August 12, 1949 (6 UST 3316).

SEC. 4015. SENSE OF CONGRESS AND REPORT REGARDING COUNTER-DRUG EFFORTS IN AFGHANISTAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President should make the substantial reduction of illegal drug production and trafficking in Afghanistan a priority in the Global War on Terrorism;

(2) the Secretary of Defense, in coordination with the Secretary of State, Attorney General, and the heads of other appropriate Federal agencies, should expand cooperation with the Government of Afghanistan and international organizations involved in counter-drug activities to assist in providing a secure environment for counter-drug personnel in Afghanistan; and

(3) the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries.

(b) REPORT REQUIRED.—(1) The Secretary of Defense and the Secretary of State shall jointly prepare a report that describes—

(A) the progress made towards substantially reducing poppy cultivation and heroin production capabilities in Afghanistan; and

(B) the extent to which profits from illegal drug activity in Afghanistan are used to financially support terrorist organizations and groups seeking to undermine the Government of Afghanistan.

(2) The report required by this subsection shall be submitted to Congress not later than 120 days after the date of the enactment of this Act.

Subtitle B—Prevent the Continued Growth of Terrorism

CHAPTER 1—UNITED STATES PUBLIC DIPLOMACY

SEC. 4021. ANNUAL REVIEW AND ASSESSMENT OF PUBLIC DIPLOMACY STRATEGY.

(a) IN GENERAL.—The Secretary of State, in coordination with all appropriate Federal agencies, shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate an annual assessment of the impact of public diplomacy efforts on target audiences. Each assessment shall review the United States public diplomacy strategy worldwide and by region, including an examination of the allocation of resources and an evaluation and assessment of the progress in, and barriers to, achieving the goals set forth under previous plans submitted under this section. Not later than March 15 of every year, the Secretary shall submit the assessment required by this subsection.

(b) FURTHER ACTION.— On the basis of such review, the Secretary, in coordination with all appropriate Federal agencies, shall submit, as part of the annual budget submission, a public diplomacy strategy plan which specifies goals, agency responsibilities, and necessary resources and mechanisms for achieving such goals during the next fiscal year. The plan may be submitted in classified form.

SEC. 4022. PUBLIC DIPLOMACY TRAINING.

(a) STATEMENT OF POLICY.—It should be the policy of the United States:

(1) The Foreign Service should recruit individuals with expertise and professional experience in public diplomacy.

(2) United States chiefs of mission should have a prominent role in the formulation of public diplomacy strategies for the countries and regions to which they are assigned and should be accountable for the operation and success of public diplomacy efforts at their posts.

(3) Initial and subsequent training of Foreign Service officers should be enhanced to include information and training on public diplomacy and the tools and technology of mass communication.

(b) PERSONNEL.—

(1) QUALIFICATIONS.—In the recruitment, training, and assignment of members of the Foreign Service, the Secretary of State shall emphasize the importance of public diplomacy and applicable skills and techniques. The Secretary shall consider the priority recruitment into the Foreign Service, at middle-level entry, of individuals with expertise and professional experience in public diplomacy, mass communications, or journalism. The Secretary shall give special consideration to individuals with language facility and experience in particular countries and regions.

(2) LANGUAGES OF SPECIAL INTEREST.—The Secretary of State shall seek to increase the number of Foreign Service officers proficient in languages spoken in predominantly Muslim countries. Such increase shall be accomplished through the recruitment of new officers and incentives for officers in service.

SEC. 4023. PROMOTING DIRECT EXCHANGES WITH MUSLIM COUNTRIES.

(a) DECLARATION OF POLICY.—Congress declares that the United States should commit to a long-term and sustainable investment in promoting engagement with people of all levels of society in countries with predominantly Muslim populations, particularly with youth and those who influence youth. Such an investment should make use of the talents and resources in the private sector and should include programs to increase the number of people who can be exposed to the United States and its fundamental ideas and values in order to dispel misconceptions. Such programs should include youth exchange programs, young ambassadors programs, international visitor programs, academic and cultural exchange programs, American Corner programs, library programs, journalist exchange programs, sister city programs, and other programs related to people-to-people diplomacy.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should significantly increase its investment in the people-to-people programs described in subsection (a).

SEC. 4024. PUBLIC DIPLOMACY REQUIRED FOR PROMOTION IN FOREIGN SERVICE.

(a) IN GENERAL.—Section 603(b) of the Foreign Service Act of 1980 (22 U.S.C. 4003(b)) is amended by adding at the end the following new sentences: "The pre-

cepts for such selection boards shall also consider whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has served in at least one position in which the primary responsibility of such member was related to public diplomacy. A member may not be promoted into or within the Senior Foreign Service if such member has not served in at least one such position.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2009.

CHAPTER 2—UNITED STATES MULTILATERAL DIPLOMACY

SEC. 4031. PURPOSE.

It is the purpose of this chapter to strengthen United States leadership and effectiveness at international organizations and multilateral institutions.

SEC. 4032. SUPPORT AND EXPANSION OF DEMOCRACY CAUCUS.

(a) IN GENERAL.—The President, acting through the Secretary of State and the relevant United States chiefs of mission, shall—

(1) continue to strongly support and seek to expand the work of the democracy caucus at the United Nations General Assembly and the United Nations Human Rights Commission; and

(2) seek to establish a democracy caucus at the United Nations Conference on Disarmament and at other broad-based international organizations.

(b) PURPOSES OF THE CAUCUS.—A democracy caucus at an international organization should—

(1) forge common positions, including, as appropriate, at the ministerial level, on matters of concern before the organization and work within and across regional lines to promote agreed positions;

(2) work to revise an increasingly outmoded system of membership selection, regional voting, and decision making; and

(3) establish a rotational leadership agreement to provide member countries an opportunity, for a set period of time, to serve as the designated president of the caucus, responsible for serving as its voice in each organization.

SEC. 4033. LEADERSHIP AND MEMBERSHIP OF INTERNATIONAL ORGANIZATIONS.

(a) UNITED STATES POLICY.—The President, acting through the Secretary of State and the relevant United States chiefs of mission, shall use the voice, vote, and influence of the United States to—

(1) where appropriate, reform the criteria for leadership and, in appropriate cases, for membership, at all United Nations bodies and at other international organizations and multilateral institutions to which the United States is a member so as to exclude countries that violate the principles of the specific organization;

(2) make it a policy of the United Nations and other international organizations and multilateral institutions of which the United States is a member that a member country may not stand in nomination for membership or in nomination or in rotation for a leadership position in such bodies if the member country is subject to sanctions imposed by the United Nations Security Council; and

(3) work to ensure that no member country stand in nomination for membership, or in nomination or in rotation for a leadership position in such organizations, or for membership on the United Nations Security Council, if the member country is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

(b) REPORT TO CONGRESS.—Not later than 15 days after a country subject to a determination under one or more of the provisions of law specified in subsection (a)(3) is selected for membership or a leadership post in an international organization of which the United States is a member or for membership on the United Nations Security Council, the Secretary of State shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on any steps taken pursuant to subsection (a)(3).

SEC. 4034. INCREASED TRAINING IN MULTILATERAL DIPLOMACY.

(a) TRAINING PROGRAMS.—Section 708 of the Foreign Service Act of 1980 (22 U.S.C. 4028) is amended by adding at the end the following new subsection:

"(c) TRAINING IN MULTILATERAL DIPLOMACY.—

"(1) IN GENERAL.—The Secretary shall establish a series of training courses for officers of the Service, including appropriate chiefs of mission, on the con-

duct of diplomacy at international organizations and other multilateral institutions and at broad-based multilateral negotiations of international instruments.

"(2) PARTICULAR PROGRAMS.—The Secretary shall ensure that the training described in paragraph (1) is provided at various stages of the career of members of the service. In particular, the Secretary shall ensure that after January 1, 2006—

"(A) officers of the Service receive training on the conduct of diplomacy at international organizations and other multilateral institutions and at broad-based multilateral negotiations of international instruments as part of their training upon entry into the Service; and

"(B) officers of the Service, including chiefs of mission, who are assigned to United States missions representing the United States to international organizations and other multilateral institutions or who are assigned in Washington, D.C., to positions that have as their primary responsibility formulation of policy towards such organizations and institutions or towards participation in broad-based multilateral negotiations of international instruments, receive specialized training in the areas described in paragraph (1) prior to beginning of service for such assignment or, if receiving such training at that time is not practical, within the first year of beginning such assignment.".

(b) TRAINING FOR CIVIL SERVICE EMPLOYEES.—The Secretary shall ensure that employees of the Department of State who are members of the civil service and who are assigned to positions described in section 708(c) of the Foreign Service Act of 1980 (as amended by subsection (a)) receive training described in such section.

(c) CONFORMING AMENDMENTS.—Section 708 of such Act is further amended—

(1) in subsection (a), by striking "(a) The" and inserting "(a) TRAINING ON HUMAN RIGHTS.—The"; and

(2) in subsection (b), by striking "(b) The" and inserting "(b) TRAINING ON REFUGEE LAW AND RELIGIOUS PERSECUTION.—The".

SEC. 4035. IMPLEMENTATION AND ESTABLISHMENT OF OFFICE ON MULTILATERAL NEGOTIATIONS.

(a) ESTABLISHMENT OF OFFICE.—The Secretary of State is authorized to establish, within the Bureau of International Organizational Affairs, an Office on Multilateral Negotiations to be headed by a Special Representative for Multilateral Negotiations (in this section referred to as the "Special Representative").

(b) APPOINTMENT.—The Special Representative shall be appointed by the President and shall have the rank of Ambassador-at-Large. At the discretion of the President another official at the Department may serve as the Special Representative.

(c) STAFFING.—The Special Representative shall have a staff of Foreign Service and civil service officers skilled in multilateral diplomacy.

(d) DUTIES.—The Special Representative shall have the following responsibilities:

(1) IN GENERAL.—The primary responsibility of the Special Representative shall be to assist in the organization of, and preparation for, United States participation in multilateral negotiations, including advocacy efforts undertaken by the Department of State and other United States Government agencies.

(2) CONSULTATIONS.—The Special Representative shall consult with Congress, international organizations, nongovernmental organizations, and the private sector on matters affecting multilateral negotiations.

(3) ADVISORY ROLE.—The Special Representative shall advise the Assistant Secretary for International Organizational Affairs and, as appropriate, the Secretary of State, regarding advocacy at international organizations, multilateral institutions, and negotiations, and shall make recommendations regarding—

(A) effective strategies (and tactics) to achieve United States policy objectives at multilateral negotiations;

(B) the need for and timing of high level intervention by the President, the Secretary of State, the Deputy Secretary of State, and other United States officials to secure support from key foreign government officials for United States positions at such organizations, institutions, and negotiations; and

(C) the composition of United States delegations to multilateral negotiations.

(4) ANNUAL DIPLOMATIC MISSIONS OF MULTILATERAL ISSUES.—The Special Representative, in coordination with the Assistant Secretary for International Organizational Affairs, shall organize annual diplomatic missions to appropriate foreign countries to conduct consultations between principal officers responsible for advising the Secretary of State on international organizations and high-level representatives of the governments of such foreign countries to promote the United States agenda at the United Nations General Assembly and other key international fora (such as the United Nations Human Rights Commission).

(5) LEADERSHIP AND MEMBERSHIP OF INTERNATIONAL ORGANIZATIONS.—The Special Representative, in coordination with the Assistant Secretary of International Organizational Affairs, shall direct the efforts of the United States to reform the criteria for leadership of and membership in international organizations as described in section 4033.

(6) PARTICIPATION IN MULTILATERAL NEGOTIATIONS.—The Secretary of State may direct the Special Representative to serve as a member of a United States delegation to any multilateral negotiation.

CHAPTER 3—OTHER PROVISIONS

SEC. 4041. PILOT PROGRAM TO PROVIDE GRANTS TO AMERICAN-SPONSORED SCHOOLS IN PREDOMINANTLY MUSLIM COUNTRIES TO PROVIDE SCHOLARSHIPS.

(a) FINDINGS.—Congress finds the following:

(1) During the 2003–2004 school year, the Office of Overseas Schools of the Department of State is financially assisting 189 elementary and secondary schools in foreign countries.

(2) American-sponsored elementary and secondary schools are located in more than 20 countries with significant Muslim populations in the Near East, Africa, South Asia, Central Asia, and East Asia.

(3) American-sponsored elementary and secondary schools provide an American-style education in English, with curricula that typically include an emphasis on the development of critical thinking and analytical skills.

(b) PURPOSE.—The United States has an interest in increasing the level of financial support provided to American-sponsored elementary and secondary schools in predominantly Muslim countries, in order to—

(1) increase the number of students in such countries who attend such schools;

(2) increase the number of young people who may thereby gain at any early age an appreciation for the culture, society, and history of the United States; and

(3) increase the number of young people who may thereby improve their proficiency in the English language.

(c) PILOT PROGRAM AUTHORIZED.—The Secretary of State, acting through the Director of the Office of Overseas Schools of the Department of State, may conduct a pilot program to make grants to American-sponsored elementary and secondary schools in predominantly Muslim countries for the purpose of providing full or partial merit-based scholarships to students from lower- and middle-income families of such countries to attend such schools.

(d) DETERMINATION OF ELIGIBLE STUDENTS.—For purposes of expending grant funds, an American-sponsored elementary and secondary school that receives a grant under subsection (c) is authorized to establish criteria to be implemented by such school to determine what constitutes lower- and middle-income families in the country (or region of the country, if regional variations in income levels in the country are significant) in which such school is located.

(e) RESTRICTION ON USE OF FUNDS.—Amounts appropriated to the Secretary of State pursuant to the authorization of appropriations in subsection (h) shall be used for the sole purpose of making grants under this section, and may not be used for the administration of the Office of Overseas Schools of the Department of State or for any other activity of the Office.

(f) VOLUNTARY PARTICIPATION.—Nothing in this section shall be construed to require participation in the pilot program by an American-sponsored elementary or secondary school in a predominantly Muslim country.

(g) REPORT.—Not later than April 15, 2006, the Secretary shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the pilot program. The report shall assess the success of the program, examine any obstacles encountered in its implementation, and address whether it should be continued, and if so, provide recommendations to increase its effectiveness.

(h) FUNDING.—There are authorized to be appropriated to the Secretary of State such sums as may be necessary for each of fiscal years 2005, 2006, and 2007 to carry out this section.

SEC. 4042. ENHANCING FREE AND INDEPENDENT MEDIA.

(a) FINDINGS.—Congress makes the following findings:

(1) Freedom of speech and freedom of the press are fundamental human rights.

(2) The United States has a national interest in promoting these freedoms by supporting free media abroad, which is essential to the development of free and democratic societies consistent with our own.

(3) Free media is undermined, endangered, or nonexistent in many repressive and transitional societies around the world, including in Eurasia, Africa, and the Middle East.

(4) Individuals lacking access to a plurality of free media are vulnerable to misinformation and propaganda and are potentially more likely to adopt anti-American views.

(5) Foreign governments have a responsibility to actively and publicly discourage and rebut unprofessional and unethical media while respecting journalistic integrity and editorial independence.

(b) STATEMENTS OF POLICY.—It shall be the policy of the United States, acting through the Secretary of State, to—

(1) ensure that the promotion of press freedoms and free media worldwide is a priority of United States foreign policy and an integral component of United States public diplomacy;

(2) respect the journalistic integrity and editorial independence of free media worldwide; and

(3) ensure that widely accepted standards for professional and ethical journalistic and editorial practices are employed when assessing international media.

(c) GRANTS TO PRIVATE SECTOR GROUP TO ESTABLISH MEDIA NETWORK.—

(1) IN GENERAL.—Grants made available to the National Endowment for Democracy (NED) pursuant to paragraph (3) shall be used by NED to provide funding to a private sector group to establish and manage a free and independent media network in accordance with paragraph (2).

(2) PURPOSE.—The purpose of the network shall be to provide an effective forum to convene a broad range of individuals, organizations, and governmental participants involved in journalistic activities and the development of free and independent media to—

(A) fund a clearinghouse to collect and share information concerning international media development and training;

(B) improve research in the field of media assistance and program evaluation to better inform decisions regarding funding and program design for government and private donors;

(C) explore the most appropriate use of existing means to more effectively encourage the involvement of the private sector in the field of media assistance; and

(D) identify effective methods for the development of a free and independent media in societies in transition.

(3) FUNDING.—For grants made by the Department of State to NED as authorized by the National Endowment for Democracy Act (Pub. L. 98–164, 97 Stat. 1039), there are authorized to be appropriated to the Secretary of State such sums as may be necessary for each of fiscal years 2005, 2006, and 2007 to carry out this section.

SEC. 4043. COMBATING BIASED OR FALSE FOREIGN MEDIA COVERAGE OF THE UNITED STATES.

(a) FINDINGS.—Congress finds the following:

(1) Biased or false media coverage of the United States and its allies is a significant factor encouraging terrorist acts against the people of the United States.

(2) Public diplomacy efforts designed to encourage an accurate understanding of the people of the United States and the policies of the United States are unlikely to succeed if foreign publics are subjected to unrelenting biased or false local media coverage of the United States.

(3) Where freedom of the press exists in foreign countries the United States can combat biased or false media coverage by responding in the foreign media or by communicating directly to foreign publics in such countries.

(4) Foreign governments which encourage biased or false media coverage of the United States bear a significant degree of responsibility for creating a climate within which terrorism can flourish. Such governments are responsible for encouraging biased or false media coverage if they—

(A) issue direct or indirect instructions to the media to publish biased or false information regarding the United States;

(B) make deliberately biased or false charges expecting that such charges will be disseminated; or

(C) so severely constrain the ability of the media to express criticism of any such government that one of the few means of political expression available is criticism of the United States.

(b) STATEMENTS OF POLICY.—

(1) FOREIGN GOVERNMENTS.—It shall be the policy of the United States to regard foreign governments as knowingly engaged in unfriendly acts toward the United States if such governments—

(A) instruct their state-owned or influenced media to include content that is anti-American or prejudicial to the foreign and security policies of the United States; or

(B) make deliberately false charges regarding the United States or permit false or biased charges against the United States to be made while constraining normal political discourse.

(2) SEEKING MEDIA ACCESS; RESPONDING TO FALSE CHARGES.—It shall be the policy of the United States to—

(A) seek access to the media in foreign countries on terms no less favorable than those afforded any other foreign entity or on terms available to the foreign country in the United States; and

(B) combat biased or false media coverage in foreign countries of the United States and its allies by responding in the foreign media or by communicating directly to foreign publics.

(c) RESPONSIBILITIES REGARDING BIASED OR FALSE MEDIA COVERAGE.—

(1) SECRETARY OF STATE.—The Secretary of State shall instruct chiefs of mission to report on and combat biased or false media coverage originating in or received in foreign countries to which such chiefs are posted. Based on such reports and other information available to the Secretary, the Secretary shall prioritize efforts to combat such media coverage, giving special attention to audiences where fostering popular opposition to terrorism is most important and such media coverage is most prevalent.

(2) CHIEFS OF MISSION.—Chiefs of mission shall have the following responsibilities:

(A) Chiefs of mission shall give strong priority to combatting biased or false media reports in foreign countries to which such chiefs are posted regarding the United States.

(B) Chiefs of mission posted to foreign countries in which freedom of the press exists shall inform the governments of such countries of the policies of the United States regarding biased or false media coverage of the United States, and shall make strong efforts to persuade such governments to change policies that encourage such media coverage.

(d) REPORTS.—Not later than 120 days after the date of the enactment of this Act and at least annually thereafter until January 1, 2015, the Secretary shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report regarding the major themes of biased or false media coverage of the United States in foreign countries, the actions taken to persuade foreign governments to change policies that encourage such media coverage (and the results of such actions), and any other actions taken to combat such media coverage in foreign countries.

SEC. 4044. REPORT ON BROADCAST OUTREACH STRATEGY.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the strategy of the United States to expand its outreach to foreign Muslim audiences through broadcast media.

(b) CONTENT.—The report required under subsection (a) shall contain the following:

(1) An assessment of the Broadcasting Board of Governors and the public diplomacy activities of the Department of State with respect to outreach to foreign Muslim audiences through broadcast media.

(2) An outline of recommended actions that the United States should take to more regularly and comprehensively present a United States point of view through indigenous broadcast media in countries with sizeable Muslim populations, including increasing appearances by United States Government officials, experts, and citizens.

(3) An assessment of potential incentives for, and costs associated with, encouraging United States broadcasters to dub or subtitle into Arabic and other relevant languages their news and public affairs programs broadcast in Muslim countries in order to present those programs to a much broader Muslim audience than is currently reached.

(4) An assessment of providing a training program in media and press affairs for members of the Foreign Service.

SEC. 4045. OFFICE RELOCATION.

As soon as practicable after the date of the enactment of this Act, the Secretary of State shall take such actions as are necessary to consolidate within the Harry S. Truman Building all offices of the Department of State that are responsible for the conduct of public diplomacy, including the Bureau of Educational and Cultural Affairs.

SEC. 4046. STRENGTHENING THE COMMUNITY OF DEMOCRACIES FOR MUSLIM COUNTRIES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States—

(1) should work with the Community of Democracies to discuss, develop, and refine policies and assistance programs to support and promote political, economic, judicial, educational, and social reforms in Muslim countries;

(2) should, as part of that effort, secure support to require countries seeking membership in the Community of Democracies to be in full compliance with the Community's criteria for participation, as established by the Community's Convening Group, should work to ensure that the criteria are part of a legally binding document, and should urge other donor countries to use compliance with the criteria as a basis for determining diplomatic and economic relations (including assistance programs) with such participating countries; and

(3) should seek support for international contributions to the Community of Democracies and should seek authority for the Community's Convening Group to oversee adherence and compliance of participating countries with the criteria.

(b) MIDDLE EAST PARTNERSHIP INITIATIVE AND BROADER MIDDLE EAST AND NORTH AFRICA INITIATIVE .—Amounts made available to carry out the Middle East Partnership Initiative and the Broader Middle East and North Africa Initiative may be made available to the Community of Democracies in order to strengthen and expand its work with Muslim countries.

(c) REPORT.—The Secretary of State shall include in the annual report entitled "Supporting Human Rights and Democracy: The U.S. Record" a description of efforts by the Community of Democracies to support and promote political, economic, judicial, educational, and social reforms in Muslim countries and the extent to which such countries meet the criteria for participation in the Community of Democracies.

Subtitle C—Reform of Designation of Foreign Terrorist Organizations

SEC. 4051. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

(a) PERIOD OF DESIGNATION.—Section 219(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)) is amended—

(1) in subparagraph (A)—

(A) by striking "Subject to paragraphs (5) and (6), a" and inserting "A"; and

(B) by striking "for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)" and inserting "until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c)";

(2) by striking subparagraph (B) and inserting the following:

"(B) REVIEW OF DESIGNATION UPON PETITION.—

"(i) IN GENERAL.—The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

"(ii) PETITION PERIOD.—For purposes of clause (i)—

"(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

"(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

"(iii) PROCEDURES.—Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) have changed in such a manner as to warrant revocation with respect to the organization.

"(iv) DETERMINATION.—

"(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

"(II) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

"(III) PUBLICATION OF DETERMINATION.—A determination made by the Secretary under this clause shall be published in the Federal Register.

"(IV) PROCEDURES.—Any revocation by the Secretary shall be made in accordance with paragraph (6).."; and

(3) by adding at the end the following:

"(C) OTHER REVIEW OF DESIGNATION.—

"(i) IN GENERAL.—If in a 6-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

"(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

"(iii) PUBLICATION OF RESULTS OF REVIEW.—The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.".

(b) ALIASES.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) AMENDMENTS TO A DESIGNATION.—

"(1) IN GENERAL.—The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

"(2) PROCEDURE.—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) shall also apply to an amended designation.

"(3) ADMINISTRATIVE RECORD.—The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

"(4) CLASSIFIED INFORMATION.—The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(B), by striking "subsection (b)" and inserting "subsection (c)";

(B) in paragraph (6)(A)—

(i) in the matter preceding clause (i), by striking "or a redesignation made under paragraph (4)(B)" and inserting "at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)"; and

(ii) in clause (i), by striking "or redesignation";

(C) in paragraph (7), by striking ", or the revocation of a redesignation under paragraph (6),"; and

(D) in paragraph (8)—

(i) by striking ", or if a redesignation under this subsection has become effective under paragraph (4)(B),"; and

(ii) by striking "or redesignation"; and

(2) in subsection (c), as so redesignated—

(A) in paragraph (1), by striking "of the designation in the Federal Register," and all that follows through "review of the designation" and inserting "in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review";

(B) in paragraph (2), by inserting ", amended designation, or determination in response to a petition for revocation" after "designation";

(C) in paragraph (3), by inserting ", amended designation, or determination in response to a petition for revocation" after "designation"; and

(D) in paragraph (4), by inserting ", amended designation, or determination in response to a petition for revocation" after "designation" each place that term appears.

(d) SAVINGS PROVISION.—For purposes of applying section 219 of the Immigration and Nationality Act on or after the date of enactment of this Act, the term "designation", as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of enactment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

SEC. 4052. INCLUSION IN ANNUAL DEPARTMENT OF STATE COUNTRY REPORTS ON TERRORISM OF INFORMATION ON TERRORIST GROUPS THAT SEEK WEAPONS OF MASS DESTRUCTION AND GROUPS THAT HAVE BEEN DESIGNATED AS FOREIGN TERRORIST ORGANIZATIONS.

(a) INCLUSION IN REPORTS.—Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f) is amended—

(1) in subsection (a)(2)—

(A) by inserting "any terrorist group known to have obtained or developed, or to have attempted to obtain or develop, weapons of mass destruction," after "during the preceding five years,"; and

(B) by inserting "any group designated by the Secretary as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189)," after "Export Administration Act of 1979,";

(2) in subsection (b)(1)(C)(iii), by striking "and" at the end;

(3) in subsection (b)(1)(C)—

(A) by redesignating clause (iv) as clause (v); and

(B) by inserting after clause (iii) the following new clause:

"(iv) providing weapons of mass destruction, or assistance in obtaining or developing such weapons, to terrorists or terrorist groups; and"; and

(4) in subsection (b)(3) (as redesignated by section 4002(b)(2)(B) of this Act)—

(A) by redesignating subparagraphs (C), (D), and (E) as (D), (E), and (F), respectively; and

(B) by inserting after subparagraph (B) the following new subparagraph: "(C) efforts by those groups to obtain or develop weapons of mass destruction;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply beginning with the first report under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), submitted more than one year after the date of the enactment of this Act.

Subtitle D—Afghanistan Freedom Support Act Amendments of 2004

SEC. 4061. SHORT TITLE.

This subtitle may be cited as the "Afghanistan Freedom Support Act Amendments of 2004".

SEC. 4062. COORDINATION OF ASSISTANCE FOR AFGHANISTAN.

(a) FINDINGS.—Congress finds that—

(1) the Final Report of the National Commission on Terrorist Attacks Upon the United States criticized the provision of United States assistance to Afghanistan for being too inflexible; and

(2) the Afghanistan Freedom Support Act of 2002 (Public Law 107–327; 22 U.S.C. 7501 et seq.) contains provisions that provide for flexibility in the provision of assistance for Afghanistan and are not subject to the requirements of

typical foreign assistance programs and provide for the designation of a coordinator to oversee United States assistance for Afghanistan.

(b) DESIGNATION OF COORDINATOR.—Section 104(a) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7514(a)) is amended in the matter preceding paragraph (1) by striking "is strongly urged to" and inserting "shall".

(c) OTHER MATTERS.—Section 104 of such Act (22 U.S.C. 7514) is amended by adding at the end the following:

"(c) PROGRAM PLAN.—The coordinator designated under subsection (a) shall annually submit to the Committees on International Relations and Appropriations of the House of Representatives and the Committees on Foreign Relations and Appropriations of the Senate the Administration's plan for assistance to Afghanistan together with a description of such assistance in prior years.

"(d) COORDINATION WITH INTERNATIONAL COMMUNITY.—The coordinator designated under subsection (a) shall work with the international community, including multilateral organizations and international financial institutions, and the Government of Afghanistan to ensure that assistance to Afghanistan is implemented in a coherent, consistent, and efficient manner to prevent duplication and waste.".

SEC. 4063. GENERAL PROVISIONS RELATING TO THE AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.

(a) ASSISTANCE TO PROMOTE ECONOMIC, POLITICAL AND SOCIAL DEVELOPMENT.—

(1) DECLARATION OF POLICY.—Congress reaffirms the authorities contained in title I of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.; relating to economic and democratic development assistance for Afghanistan).

(2) PROVISION OF ASSISTANCE.—Section 103(a) of such Act (22 U.S.C. 7513(a)) is amended in the matter preceding paragraph (1) by striking "section 512 of Public Law 107–115 or any other similar" and inserting "any other".

(b) DECLARATIONS OF POLICY.—Congress makes the following declarations:

(1) The United States reaffirms the support that it and other countries expressed for the report entitled "Securing Afghanistan's Future" in their Berlin Declaration of April 2004. The United States should help enable the growth needed to create an economically sustainable Afghanistan capable of the poverty reduction and social development foreseen in the report.

(2) The United States supports the parliamentary elections to be held in Afghanistan by April 2005 and will help ensure that such elections are not undermined by warlords or narcotics traffickers.

(3)(A) The United States continues to urge North Atlantic Treaty Organization members and other friendly countries to make much greater military contributions toward securing the peace in Afghanistan.

(B) The United States should continue to lead in the security domain by, among other things, providing logistical support to facilitate those contributions.

(C) In coordination with the Government of Afghanistan, the United States should urge others, and act itself, to increase efforts to promote disarmament, demobilization, and reintegration efforts, to enhance counternarcotics activities, to expand deployments of Provincial Reconstruction Teams, and to increase training of Afghanistan's National Army and its police and border security forces.

(c) LONG-TERM STRATEGY.—

(1) STRATEGY.—Title III of such Act (22 U.S.C. 7551 et seq.) is amended by adding at the end the following:

"SEC. 304 FORMULATION OF LONG-TERM STRATEGY FOR AFGHANISTAN.

"(a) STRATEGY.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Afghanistan Freedom Support Act Amendments of 2004, the President shall formulate and transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a 5-year strategy for Afghanistan that includes specific and measurable goals, timeframes for accomplishing such goals, and specific resource levels necessary for accomplishing such goals for addressing the long-term development and security needs of Afghanistan, including sectors such as agriculture and irrigation, parliamentary and democratic development, the judicial system and rule of law, human rights, education, health, telecommunications, electricity, women's rights, counternarcotics, police, border security, anti-corruption, and other law-enforcement activities.

"(2) ADDITIONAL REQUIREMENT.—The strategy shall also delineate responsibilities for achieving such goals and identify and address possible external factors that could significantly affect the achievement of such goals.

"(b) IMPLEMENTATION.—Not later than 30 days after the date of the transmission of the strategy required by subsection (a), the Secretary of State, the Administrator

of the United States Agency for International Development, and the Secretary of Defense shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a written 5-year action plan to implement the strategy developed pursuant to subsection (a). Such action plan shall include a description and schedule of the program evaluations that will monitor progress toward achieving the goals described in subsection (a).

"(c) REVIEW.—The Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of Defense shall carry out an annual review of the strategy required by subsection (a) and the action plan required by subsection (b).

"(d) MONITORING.—The report required by section 206(c)(2) of this Act shall include—

"(1) a description of progress toward implementation of both the strategy required by subsection (a) and the action plan required by subsection (b); and

"(2) a description of any changes to the strategy or action plan since the date of the submission of the last report required by such section.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act (22 U.S.C. 7501 note) is amended by adding after the item relating to section 303 the following:

"Sec. 304. Formulation of long-term strategy for Afghanistan.".

SEC. 4064. RULE OF LAW AND RELATED ISSUES.

Section 103(a)(5)(A) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(5)(A)) is amended—

(1) in clause (v), to read as follows:

"(v) support for the activities of the Government of Afghanistan to develop modern legal codes and court rules, to provide for the creation of legal assistance programs, and other initiatives to promote the rule of law in Afghanistan;";

(2) in clause (xii), to read as follows:

"(xii) support for the effective administration of justice at the national, regional, and local levels, including programs to improve penal institutions and the rehabilitation of prisoners, to establish a responsible and community-based police force, and to rehabilitate or construct courthouses and detention facilities;"; and

(3) in clause (xiii), by striking "and" at the end;

(4) in clause (xiv), by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following:

"(xv) assistance for the protection of Afghanistan's culture, history, and national identity, including with the rehabilitation of Afghanistan's museums and sites of cultural significance.".

SEC. 4065. MONITORING OF ASSISTANCE.

Section 108 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7518) is amended by adding at the end the following:

"(c) MONITORING OF ASSISTANCE FOR AFGHANISTAN.—

"(1) REPORT.—Not later than January 15, 2005, and every six months thereafter, the Secretary of State, in consultation with the Administrator for the United States Agency for International Development, shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the obligations and expenditures of United States assistance for Afghanistan from all United States Government agencies.

"(2) SUBMISSION OF INFORMATION FOR REPORT.—The head of each United States Government agency referred to in paragraph (1) shall provide on a timely basis to the Secretary of State such information as the Secretary may reasonably require to allow the Secretary to prepare and submit the report required by such paragraph.".

SEC. 4066. UNITED STATES POLICY TO SUPPORT DISARMAMENT OF PRIVATE MILITIAS AND TO SUPPORT EXPANSION OF INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.

(a) DISARMAMENT OF PRIVATE MILITIAS.—Section 103 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513) is amended by adding at the end the following:

"(d) UNITED STATES POLICY RELATING TO DISARMAMENT OF PRIVATE MILITIAS.—

"(1) IN GENERAL.—It shall be the policy of the United States to take immediate steps to provide active support for the disarmament, demobilization, and reintegration of armed soldiers, particularly child soldiers, in Afghanistan, in close consultation with the President of Afghanistan.

"(2) REPORT.—The report required by section 206(c)(2) of this Act shall include a description of the progress to implement paragraph (1).".

(b) INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS.—Section 103 of such Act (22 U.S.C. 7513(d)), as amended by subsection (a), is further amended by adding at the end the following:

"(e) UNITED STATES POLICY RELATING TO INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS.—It shall be the policy of the United States to make every effort to support the expansion of international peacekeeping and security operations in Afghanistan in order to—

"(1) increase the area in which security is provided and undertake vital tasks related to promoting security, such as disarming warlords, militias, and irregulars, and disrupting opium production; and

"(2) safeguard highways in order to allow the free flow of commerce and to allow material assistance to the people of Afghanistan, and aid personnel in Afghanistan, to move more freely.".

SEC. 4067. EFFORTS TO EXPAND INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.

Section 206(d)(1) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7536(d)(1)) is amended to read as follows:

"(1) EFFORTS TO EXPAND INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.—

"(A) EFFORTS.—The President shall encourage, and, as authorized by law, enable other countries to actively participate in expanded international peacekeeping and security operations in Afghanistan, especially through the provision of military personnel for extended periods of time.

"(B) REPORTS.—The President shall prepare and transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on efforts carried out pursuant to subparagraph (A). The first report under this subparagraph shall be transmitted not later than 60 days after the date of the enactment of the Afghanistan Freedom Support Act Amendments of 2004 and subsequent reports shall be transmitted every six months thereafter and may be included in the report required by section 206(c)(2) of this Act.".

SEC. 4068. PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN.

(a) COUNTERNARCOTICS EFFORTS.—The Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.) is amended—

(1) by redesignating—

(A) title III as title IV; and

(B) sections 301 through 304 as sections 401 through 404, respectively; and

(2) by inserting after title II the following:

"TITLE III—PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN

"SEC. 301. ASSISTANCE FOR COUNTERNARCOTICS EFFORTS.

"In addition to programs established pursuant to section 103(a)(3) of this Act or other similar programs, the President is authorized and encouraged to implement specific initiatives to assist in the eradication of poppy cultivation and the disruption of heroin production in Afghanistan, such as—

"(1) promoting alternatives to poppy cultivation, including the introduction of high value crops that are suitable for export and the provision of appropriate technical assistance and credit mechanisms for farmers;

"(2) enhancing the ability of farmers to bring legitimate agricultural goods to market;

"(3) notwithstanding section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420), assistance, including nonlethal equipment, training (including training in internationally recognized standards of human rights, the rule of law, anti-corruption, and the promotion of civilian police roles that support democracy), and payments, during fiscal years 2006 through 2008, for salaries for special counternarcotics police and supporting units;

"(4) training the Afghan National Army in counternarcotics activities; and

"(5) creating special counternarcotics courts, prosecutors, and places of incarceration.".

(b) CLERICAL AMENDMENTS.—The table of contents for such Act (22 U.S.C. 7501 note) is amended—

(1) by redesignating—

(A) the item relating to title III as the item relating to title IV; and

(B) the items relating to sections 301 through 304 as the items relating to sections 401 through 404; and

(2) by inserting after the items relating to title II the following:

"TITLE III—PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN

"Sec. 301. Assistance for counternarcotics efforts.".

SEC. 4069. ADDITIONAL AMENDMENTS TO THE AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.

(a) TECHNICAL AMENDMENT.—Section 103(a)(7)(A)(xii) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(7)(A)(xii)) is amended by striking "National" and inserting "Afghan Independent".

(b) REPORTING REQUIREMENT.—Section 206(c)(2) of such Act (22 U.S.C. 7536(c)(2)) is amended in the matter preceding subparagraph (A) by striking "2007" and inserting "2012".

SEC. 4070. REPEAL.

Section 620D of the Foreign Assistance Act of 1961 (22 U.S.C. 2374; relating to prohibition on assistance to Afghanistan) is hereby repealed.

Subtitle E—Provisions Relating to Saudi Arabia and Pakistan

SEC. 4081. NEW UNITED STATES STRATEGY FOR RELATIONSHIP WITH SAUDI ARABIA.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the relationship between the United States and Saudi Arabia should include a more robust dialogue between the people and Government of the United States and the people and Government of Saudi Arabia in order to provide for a reevaluation of, and improvements to, the relationship by both sides.

(b) REPORT.—

(1) IN GENERAL.— Not later than one year after the date of the enactment of this Act, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a strategy for collaboration with the people and Government of Saudi Arabia on subjects of mutual interest and importance to the United States.

(2) CONTENTS.—The strategy required under paragraph (1) shall include the following provisions:

(A) A framework for security cooperation in the fight against terrorism, with special reference to combating terrorist financing and an examination of the origins of modern terrorism.

(B) A framework for political and economic reform in Saudi Arabia and throughout the Middle East.

(C) An examination of steps that should be taken to reverse the trend toward extremism in Saudi Arabia and other Muslim countries and throughout the Middle East.

(D) A framework for promoting greater tolerance and respect for cultural and religious diversity in Saudi Arabia and throughout the Middle East.

SEC. 4082. UNITED STATES COMMITMENT TO THE FUTURE OF PAKISTAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should, over a long-term period, help to ensure a promising, stable, and secure future for Pakistan, and should in particular provide assistance to encourage and enable Pakistan—

(1) to continue and improve upon its commitment to combating extremists;

(2) to seek to resolve any outstanding difficulties with its neighbors and other countries in its region;

(3) to continue to make efforts to fully control its territory and borders;

(4) to progress towards becoming a more effective and participatory democracy;

(5) to participate more vigorously in the global marketplace and to continue to modernize its economy;

(6) to take all necessary steps to halt the spread of weapons of mass destruction;

(7) to continue to reform its education system; and

(8) to, in other ways, implement a general strategy of moderation.

(b) STRATEGY.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress a detailed proposed strategy for the future, long-term, engagement of the United States with Pakistan.

SEC. 4083. EXTENSION OF PAKISTAN WAIVERS.

The Act entitled "An Act to authorize the President to exercise waivers of foreign assistance restrictions with respect to Pakistan through September 30, 2003, and for other purposes", approved October 27, 2001 (Public Law 107–57; 115 Stat. 403), as amended by section 2213 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1232), is further amended—

(1) in section 1(b)—

(A) in the heading, by striking "FISCAL YEAR 2004" and inserting "FISCAL YEARS 2005 AND 2006"; and

(B) in paragraph (1), by striking "2004" and inserting "2005 or 2006";

(2) in section 3(2), by striking "and 2004," and inserting "2004, 2005, and 2006"; and

(3) in section 6, by striking "2004" and inserting "2006".

Subtitle F—Oversight Provisions

SEC. 4091. CASE-ZABLOCKI ACT REQUIREMENTS.

(a) AVAILABILITY OF TREATIES AND INTERNATIONAL AGREEMENTS.—Section 112a of title 1, United States Code, is amended by adding at the end the following:

"(d) The Secretary of State shall cause to be published in slip form or otherwise made publicly available through the Internet website of the Department of State each treaty or international agreement proposed to be published in the compilation entitled 'United States Treaties and Other International Agreements' not later than 180 days after the date on which the treaty or agreement enters into force.".

(b) TRANSMISSION TO CONGRESS.—Section 112b(a) of title 1, United States Code (commonly referred to as the "Case-Zablocki Act"), is amended—

(1) in the first sentence, by striking "has entered into force" and inserting "has been signed or entered into force"; and

(2) in the second sentence, by striking "Committee on Foreign Affairs" and inserting "Committee on International Relations".

(c) REPORT.—Section 112b of title 1, United States Code, is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

"(d)(1) The Secretary of State shall submit to Congress on an annual basis a report that contains an index of all international agreements (including oral agreements), listed by country, date, title, and summary of each such agreement (including a description of the duration of activities under the agreement and the agreement itself), that the United States—

"(A) has signed, proclaimed, or with reference to which any other final formality has been executed, or that has been extended or otherwise modified, during the preceding calendar year; and

"(B) has not been published, or is not proposed to be published, in the compilation entitled 'United States Treaties and Other International Agreements'.

"(2) The report described in paragraph (1) may be submitted in classified form.".

(d) DETERMINATION OF INTERNATIONAL AGREEMENT.—Subsection (e) of section 112b of title 1, United States Code, (as redesignated) is amended—

(1) by striking "(e) The Secretary of State" and inserting "(e)(1) Subject to paragraph (2), the Secretary of State"; and

(2) by adding at the end the following:

"(2)(A) An arrangement shall constitute an international agreement within the meaning of this section (other than subsection (c) of this section) irrespective of the duration of activities under the arrangement or the arrangement itself.

"(B) Arrangements that constitute an international agreement within the meaning of this section (other than subsection (c) of this section) include, but are not limited to, the following:

"(i) A bilateral or multilateral counterterrorism agreement.

"(ii) A bilateral agreement with a country that is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).".

(e) ENFORCEMENT OF REQUIREMENTS.—Section 139(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 is amended to read as follows:

"(b) EFFECTIVE DATE.—Subsection (a) shall take effect 60 days after the date of the enactment of the 9/11 Recommendations Implementation Act and shall apply during fiscal years 2005, 2006, and 2007.".

Subtitle G—Additional Protections of United States Aviation System from Terrorist Attacks

SEC. 4101. INTERNATIONAL AGREEMENTS TO ALLOW MAXIMUM DEPLOYMENT OF FEDERAL FLIGHT DECK OFFICERS.

The President is encouraged to pursue aggressively international agreements with foreign governments to allow the maximum deployment of Federal air marshals and Federal flight deck officers on international flights.

SEC. 4102. FEDERAL AIR MARSHAL TRAINING.

Section 44917 of title 49, United States Code, is amended by adding at the end the following:

"(d) TRAINING FOR FOREIGN LAW ENFORCEMENT PERSONNEL.—

"(1) IN GENERAL.—The Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security, after consultation with the Secretary of State, may direct the Federal Air Marshal Service to provide appropriate air marshal training to law enforcement personnel of foreign countries.

"(2) WATCHLIST SCREENING.—The Federal Air Marshal Service may only provide appropriate air marshal training to law enforcement personnel of foreign countries after comparing the identifying information and records of law enforcement personnel of foreign countries against appropriate records in the consolidated and integrated terrorist watchlists of the Federal Government.

"(3) FEES.—The Assistant Secretary shall establish reasonable fees and charges to pay expenses incurred in carrying out this subsection. Funds collected under this subsection shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Assistant Secretary for purposes for which amounts in such account are available.".

SEC. 4103. MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS).

(a) UNITED STATES POLICY ON NONPROLIFERATION AND EXPORT CONTROL.—

(1) TO LIMIT AVAILABILITY AND TRANSFER OF MANPADS.—The President shall pursue, on an urgent basis, further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to limit the availability, transfer, and proliferation of MANPADSs worldwide.

(2) TO LIMIT THE PROLIFERATION OF MANPADS.—The President is encouraged to seek to enter into agreements with the governments of foreign countries that, at a minimum, would—

(A) prohibit the entry into force of a MANPADS manufacturing license agreement and MANPADS co-production agreement, other than the entry into force of a manufacturing license or co-production agreement with a country that is party to such an agreement;

(B) prohibit, except pursuant to transfers between governments, the export of a MANPADS, including any component, part, accessory, or attachment thereof, without an individual validated license; and

(C) prohibit the reexport or retransfer of a MANPADS, including any component, part, accessory, or attachment thereof, to a third person, organization, or government unless the written consent of the government that approved the original export or transfer is first obtained.

(3) TO ACHIEVE DESTRUCTION OF MANPADS.—The President should continue to pursue further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to assure the destruction of excess, obsolete, and illicit stocks of MANPADSs worldwide.

(4) REPORTING AND BRIEFING REQUIREMENT.—

(A) PRESIDENT'S REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of diplomatic efforts under paragraphs (1), (2), and (3) and of efforts by the appropriate United States agencies to comply with the recommendations of the General Accounting Office set forth in its report GAO–04–519, entitled "Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems".

(B) ANNUAL BRIEFINGS.—Annually after the date of submission of the report under subparagraph (A) and until completion of the diplomatic and compliance efforts referred to in subparagraph (A), the Secretary of State shall brief the appropriate congressional committees on the status of such efforts.

(b) FAA AIRWORTHINESS CERTIFICATION OF MISSILE DEFENSE SYSTEMS FOR COMMERCIAL AIRCRAFT.—

(1) IN GENERAL.—As soon as practicable, but not later than the date of completion of Phase II of the Department of Homeland Security's counter-man-portable air defense system (MANPADS) development and demonstration program, the Administrator of the Federal Aviation Administration shall establish a process for conducting airworthiness and safety certification of missile defense systems for commercial aircraft certified as effective and functional by the Department of Homeland Security. The process shall require a certification by the Administrator that such systems can be safely integrated into aircraft systems and ensure airworthiness and aircraft system integrity.

(2) CERTIFICATION ACCEPTANCE.—Under the process, the Administrator shall accept the certification of the Department of Homeland Security that a missile defense system is effective and functional to defend commercial aircraft against MANPADSs.

(3) EXPEDITIOUS CERTIFICATION.—Under the process, the Administrator shall expedite the airworthiness and safety certification of missile defense systems for commercial aircraft certified by the Department of Homeland Security.

(4) REPORTS.—Not later than 90 days after the first airworthiness and safety certification for a missile defense system for commercial aircraft is issued by the Administrator, and annually thereafter until December 31, 2008, the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

(c) PROGRAMS TO REDUCE MANPADS.—

(1) IN GENERAL.—The President is encouraged to pursue strong programs to reduce the number of MANPADSs worldwide so that fewer MANPADSs will be available for trade, proliferation, and sale.

(2) REPORTING AND BRIEFING REQUIREMENTS.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of the programs being pursued under subsection (a). Annually thereafter until the programs are no longer needed, the Secretary of State shall brief the appropriate congressional committees on the status of programs.

(3) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(d) MANPADS VULNERABILITY ASSESSMENTS REPORT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary of Homeland Security shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Department of Homeland Security's plans to secure airports and the aircraft arriving and departing from airports against MANPADSs attacks.

(2) MATTERS TO BE ADDRESSED.—The Secretary's report shall address, at a minimum, the following:

(A) The status of the Department's efforts to conduct MANPADSs vulnerability assessments at United States airports at which the Department is conducting assessments.

(B) How intelligence is shared between the United States intelligence agencies and Federal, State, and local law enforcement to address the MANPADS threat and potential ways to improve such intelligence sharing.

(C) Contingency plans that the Department has developed in the event that it receives intelligence indicating a high threat of a MANPADS attack on aircraft at or near United States airports.

(D) The feasibility and effectiveness of implementing public education and neighborhood watch programs in areas surrounding United States airports in cases in which intelligence reports indicate there is a high risk of MANPADS attacks on aircraft.

(E) Any other issues that the Secretary deems relevant.

(3) FORMAT.—The report required by this subsection may be submitted in a classified format.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Armed Services, the Committee on International Relations, and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) MANPADS.—The term "MANPADS" means—

(A) a surface-to-air missile system designed to be man-portable and carried and fired by a single individual; and

(B) any other surface-to-air missile system designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

Subtitle H—Improving International Standards and Cooperation to Fight Terrorist Financing

SEC. 4111. SENSE OF THE CONGRESS REGARDING SUCCESS IN MULTILATERAL ORGANIZATIONS.

(a) COMMENDATION.—The Congress commends the Secretary of the Treasury for success and leadership in establishing international standards for fighting terrorist finance through multilateral organizations, including the Financial Action Task Force (FATF) at the Organization for Economic Cooperation and Development, the International Monetary Fund, the International Bank for Reconstruction and Development, and the regional multilateral development banks.

(b) POLICY GUIDANCE.—The Congress encourages the Secretary of the Treasury to direct the United States Executive Director at each international financial institution to use the voice and vote of the United States to urge the institution, and encourages the Secretary of the Treasury to use the voice and vote of the United States in other multilateral financial policymaking bodies, to—

(1) provide funding for the implementation of FATF anti-money laundering and anti-terrorist financing standards; and

(2) promote economic development in the Middle East.

SEC. 4112. EXPANDED REPORTING REQUIREMENT FOR THE SECRETARY OF THE TREASURY.

(a) IN GENERAL.—Section 1701(b) of the International Financial Institutions Act (22 U.S.C. 262r(b)) is amended—

(1) by striking "and" at the end of paragraph (10); and

(2) by redesignating paragraph (11) as paragraph (12) and inserting after paragraph (10) the following:

"(11) an assessment of—

"(A) the progress made by the International Terrorist Finance Coordinating Council in developing policies to be pursued with the international financial institutions and other multilateral financial policymaking bodies regarding anti-terrorist financing initiatives;

"(B) the progress made by the United States in negotiations with the international financial institutions and other multilateral financial policymaking bodies to set common anti-terrorist financing standards;

"(C) the extent to which the international financial institutions and other multilateral financial policymaking bodies have adopted anti-terrorist financing standards advocated by the United States; and

"(D) whether and how the international financial institutions are contributing to the fight against the financing of terrorist activities; and".

(b) OTHER MULTILATERAL POLICYMAKING BODIES DEFINED.—Section 1701(c) of such Act (22 U.S.C. 262r(c)) is amended by adding at the end the following:

"(5) OTHER MULTILATERAL FINANCIAL POLICYMAKING BODIES.—The term 'other multilateral financial policymaking bodies' means—

"(A) the Financial Action Task Force at the Organization for Economic Cooperation and Development;

"(B) the international network of financial intelligence units known as the 'Egmont Group';

"(C) the United States, Canada, the United Kingdom, France, Germany, Italy, Japan, and Russia, when meeting as the Group of Eight; and

"(D) any other multilateral financial policymaking group in which the Secretary of the Treasury represents the United States.".

SEC. 4113. INTERNATIONAL TERRORIST FINANCE COORDINATING COUNCIL.

(a) ESTABLISHMENT.—The Secretary of the Treasury shall establish and convene an interagency council, to be known as the "International Terrorist Finance Coordinating Council" (in this section referred to as the "Council"), which shall advise the Secretary on policies to be pursued by the United States at meetings of the international financial institutions and other multilateral financial policymaking bodies, regarding the development of international anti-terrorist financing standards.

(b) MEETINGS.—

(1) ATTENDEES.—

(A) GENERAL ATTENDEES.—The Secretary of the Treasury (or a representative of the Secretary of the Treasury) and the Secretary of State (or a representative of the Secretary of State) shall attend each Council meeting.

(B) OTHER ATTENDEES.—The Secretary of the Treasury shall determine which other officers of the Federal Government shall attend a Council meeting, on the basis of the issues to be raised for consideration at the meeting. The Secretary shall include in the meeting representatives from all relevant Federal agencies with authority to address the issues.

(2) SCHEDULE.—Not less frequently than annually, the Secretary of the Treasury shall convene Council meetings at such times as the Secretary deems appropriate, based on the notice, schedule, and agenda items of the international financial institutions and other multilateral financial policymaking bodies.

SEC. 4114. DEFINITIONS.

In this subtitle:

(1) INTERNATIONAL FINANCIAL INSTITUTIONS.—The term "international financial institutions" has the meaning given in section 1701(c)(2) of the International Financial Institutions Act.

(2) OTHER MULTILATERAL FINANCIAL POLICYMAKING BODIES.—The term "other multilateral financial policymaking bodies" means—

(A) the Financial Action Task Force at the Organization for Economic Cooperation and Development;

(B) the international network of financial intelligence units known as the "Egmont Group";

(C) the United States, Canada, the United Kingdom, France, Germany, Italy, Japan, and Russia, when meeting as the Group of Eight; and

(D) any other multilateral financial policymaking group in which the Secretary of the Treasury represents the United States.

TITLE V—GOVERNMENT RESTRUCTURING

Subtitle A—Faster and Smarter Funding for First Responders

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "Faster and Smarter Funding for First Responders Act of 2004".

SEC. 5002. FINDINGS.

The Congress finds the following:

(1) In order to achieve its objective of minimizing the damage, and assisting in the recovery, from terrorist attacks, the Department of Homeland Security must play a leading role in assisting communities to reach the level of preparedness they need to respond to a terrorist attack.

(2) First responder funding is not reaching the men and women of our Nation's first response teams quickly enough, and sometimes not at all.

(3) To reform the current bureaucratic process so that homeland security dollars reach the first responders who need it most, it is necessary to clarify and consolidate the authority and procedures of the Department of Homeland Security that support first responders.

(4) Ensuring adequate resources for the new national mission of homeland security, without degrading the ability to address effectively other types of major disasters and emergencies, requires a discrete and separate grant making process for homeland security funds for first response to terrorist acts, on the one hand, and for first responder programs designed to meet pre-September 11 priorities, on the other.

(5) While a discrete homeland security grant making process is necessary to ensure proper focus on the unique aspects of terrorism prevention, prepared-

ness, and response, it is essential that State and local strategies for utilizing such grants be integrated, to the greatest extent practicable, with existing State and local emergency management plans.

(6) Homeland security grants to first responders must be based on the best intelligence concerning the capabilities and intentions of our terrorist enemies, and that intelligence must be used to target resources to the Nation's greatest threats, vulnerabilities, and consequences.

(7) The Nation's first response capabilities will be improved by sharing resources, training, planning, personnel, and equipment among neighboring jurisdictions through mutual aid agreements and regional cooperation. Such regional cooperation should be supported, where appropriate, through direct grants from the Department of Homeland Security.

(8) An essential prerequisite to achieving the Nation's homeland security objectives for first responders is the establishment of well-defined national goals for terrorism preparedness. These goals should delineate the essential capabilities that every jurisdiction in the United States should possess or to which it should have access.

(9) A national determination of essential capabilities is needed to identify levels of State and local government terrorism preparedness, to determine the nature and extent of State and local first responder needs, to identify the human and financial resources required to fulfill them, and to direct funding to meet those needs and to measure preparedness levels on a national scale.

(10) To facilitate progress in achieving, maintaining, and enhancing essential capabilities for State and local first responders, the Department of Homeland Security should seek to allocate homeland security funding for first responders to meet nationwide needs.

(11) Private sector resources and citizen volunteers can perform critical functions in assisting in preventing and responding to terrorist attacks, and should be integrated into State and local planning efforts to ensure that their capabilities and roles are understood, so as to provide enhanced State and local operational capability and surge capacity.

(12) Public-private partnerships, such as the partnerships between the Business Executives for National Security and the States of New Jersey and Georgia, can be useful to identify and coordinate private sector support for State and local first responders. Such models should be expanded to cover all States and territories.

(13) An important aspect of essential capabilities is measurability, so that it is possible to determine how prepared a State or local government is now, and what additional steps it needs to take, in order to respond to acts of terrorism.

(14) The Department of Homeland Security should establish, publish, and regularly update national voluntary consensus standards for both equipment and training, in cooperation with both public and private sector standard setting organizations, to assist State and local governments in obtaining the equipment and training to attain the essential capabilities for first response to acts of terrorism, and to ensure that first responder funds are spent wisely.

SEC. 5003. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

(a) IN GENERAL.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is amended—

(1) in section 1(b) in the table of contents by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"Sec. 1801. Definitions.
"Sec. 1802. Faster and smarter funding for first responders.
"Sec. 1803. Essential capabilities for first responders.
"Sec. 1804. Task Force on Essential Capabilities for First Responders.
"Sec. 1805. Covered grant eligibility and criteria.
"Sec. 1806. Use of funds and accountability requirements.
"Sec. 1807. National standards for first responder equipment and training."; and

(2) by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"SEC. 1801. DEFINITIONS.

"In this title:

"(1) BOARD.—The term 'Board' means the First Responder Grants Board established under section 1805(f).

"(2) COVERED GRANT.—The term 'covered grant' means any grant to which this title applies under section 1802.

"(3) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means any Indian tribe or consortium of Indian tribes that—

"(A) meets the criteria for inclusion in the qualified applicant pool for Self-Governance that are set forth in section 402(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bb(c));

"(B) employs at least 10 full-time personnel in a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; and

"(C)(i) is located on, or within 5 miles of, an international border or waterway;

"(ii) is located within 5 miles of a facility within a critical infrastructure sector identified in section 1803(c)(2);

"(iii) is located within or contiguous to one of the 50 largest metropolitan statistical areas in the United States; or

"(iv) has more than 1,000 square miles of Indian country, as that term is defined in section 1151 of title 18, United States Code.

"(4) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term 'elevations in the threat alert level' means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second highest threat level under the Homeland Security Advisory System referred to in section 201(d)(7).

"(5) EMERGENCY PREPAREDNESS.—The term 'emergency preparedness' shall have the same meaning that term has under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a).

"(6) ESSENTIAL CAPABILITIES.—The term 'essential capabilities' means the levels, availability, and competence of emergency personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently prevent, prepare for, and respond to acts of terrorism consistent with established practices.

"(7) FIRST RESPONDER.—The term 'first responder' shall have the same meaning as the term 'emergency response provider'.

"(8) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(9) REGION.—The term 'region' means—

"(A) any geographic area consisting of all or parts of 2 or more contiguous States, counties, municipalities, or other local governments that have a combined population of at least 1,650,000 or have an area of not less than 20,000 square miles, and that, for purposes of an application for a covered grant, is represented by 1 or more governments or governmental agencies within such geographic area, and that is established by law or by agreement of 2 or more such governments or governmental agencies in a mutual aid agreement; or

"(B) any other combination of contiguous local government units (including such a combination established by law or agreement of two or more governments or governmental agencies in a mutual aid agreement) that is formally certified by the Secretary as a region for purposes of this Act with the consent of—

"(i) the State or States in which they are located, including a multi-State entity established by a compact between two or more States; and

"(ii) the incorporated municipalities, counties, and parishes that they encompass.

"(10) TASK FORCE.—The term 'Task Force' means the Task Force on Essential Capabilities for First Responders established under section 1804.

"SEC. 1802. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

"(a) COVERED GRANTS.—This title applies to grants provided by the Department to States, regions, or directly eligible tribes for the primary purpose of improving the ability of first responders to prevent, prepare for, respond to, or mitigate threatened or actual terrorist attacks, especially those involving weapons of mass destruction, administered under the following:

"(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

"(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.

"(3) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

"(4) CITIZEN CORPS PROGRAM.—The Citizen Corps Program of the Department, or any successor to such grant program.

"(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

"(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.

"(2) FIRE GRANT PROGRAMS.—The fire grant programs authorized by sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229, 2229a).

"(3) EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE ACCOUNT GRANTS.—The Emergency Management Performance Grant program and the Urban Search and Rescue Grants program authorized by title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.); the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (113 Stat. 1047 et seq.); and the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

"SEC. 1803. ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

"(a) ESTABLISHMENT OF ESSENTIAL CAPABILITIES.—

"(1) IN GENERAL.—For purposes of covered grants, the Secretary shall establish clearly defined essential capabilities for State and local government preparedness for terrorism, in consultation with—

"(A) the Task Force on Essential Capabilities for First Responders established under section 1804;

"(B) the Under Secretaries for Emergency Preparedness and Response, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology, and the Director of the Office for Domestic Preparedness;

"(C) the Secretary of Health and Human Services;

"(D) other appropriate Federal agencies;

"(E) State and local first responder agencies and officials; and

"(F) consensus-based standard making organizations responsible for setting standards relevant to the first responder community.

"(2) DEADLINES.—The Secretary shall—

"(A) establish essential capabilities under paragraph (1) within 30 days after receipt of the report under section 1804(b); and

"(B) regularly update such essential capabilities as necessary, but not less than every 3 years.

"(3) PROVISION OF ESSENTIAL CAPABILITIES.—The Secretary shall ensure that a detailed description of the essential capabilities established under paragraph (1) is provided promptly to the States and to the Congress. The States shall make the essential capabilities available as necessary and appropriate to local governments within their jurisdictions.

"(b) OBJECTIVES.—The Secretary shall ensure that essential capabilities established under subsection (a)(1) meet the following objectives:

"(1) SPECIFICITY.—The determination of essential capabilities specifically shall describe the training, planning, personnel, and equipment that different types of communities in the Nation should possess, or to which they should have access, in order to meet the Department's goals for terrorism preparedness based upon—

"(A) the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States;

"(B) the types of threats, vulnerabilities, geography, size, and other factors that the Secretary has determined to be applicable to each different type of community; and

"(C) the principles of regional coordination and mutual aid among State and local governments.

"(2) FLEXIBILITY.—The establishment of essential capabilities shall be sufficiently flexible to allow State and local government officials to set priorities based on particular needs, while reaching nationally determined terrorism preparedness levels within a specified time period.

"(3) MEASURABILITY.—The establishment of essential capabilities shall be designed to enable measurement of progress towards specific terrorism preparedness goals.

"(4) COMPREHENSIVENESS.—The determination of essential capabilities for terrorism preparedness shall be made within the context of a comprehensive State emergency management system.

"(c) FACTORS TO BE CONSIDERED.—

"(1) IN GENERAL.—In establishing essential capabilities under subsection (a)(1), the Secretary specifically shall consider the variables of threat, vulnerability, and consequences with respect to the Nation's population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

"(2) CRITICAL INFRASTRUCTURE SECTORS.—The Secretary specifically shall consider threats of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

"(A) Agriculture.
"(B) Banking and finance.
"(C) Chemical industries.
"(D) The defense industrial base.
"(E) Emergency services.
"(F) Energy.
"(G) Food.
"(H) Government.
"(I) Postal and shipping.
"(J) Public health.
"(K) Information and telecommunications networks.
"(L) Transportation.
"(M) Water.

The order in which the critical infrastructure sectors are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such sectors.

"(3) TYPES OF THREAT.—The Secretary specifically shall consider the following types of threat to the critical infrastructure sectors described in paragraph (2), and to populations in all areas of the Nation, urban and rural:

"(A) Biological threats.
"(B) Nuclear threats.
"(C) Radiological threats.
"(D) Incendiary threats.
"(E) Chemical threats.
"(F) Explosives.
"(G) Suicide bombers.
"(H) Cyber threats.
"(I) Any other threats based on proximity to specific past acts of terrorism or the known activity of any terrorist group.

The order in which the types of threat are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such threats.

"(4) CONSIDERATION OF ADDITIONAL FACTORS.—In establishing essential capabilities under subsection (a)(1), the Secretary shall take into account any other specific threat to a population (including a transient commuting or tourist population) or critical infrastructure sector that the Secretary has determined to exist.

"SEC. 1804. TASK FORCE ON ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

"(a) ESTABLISHMENT.—To assist the Secretary in establishing essential capabilities under section 1803(a)(1), the Secretary shall establish an advisory body pursuant to section 871(a) not later than 60 days after the date of the enactment of this section, which shall be known as the Task Force on Essential Capabilities for First Responders.

"(b) REPORT.—

"(1) IN GENERAL.—The Task Force shall submit to the Secretary, not later than 9 months after its establishment by the Secretary under subsection (a) and every 3 years thereafter, a report on its recommendations for essential capabilities for preparedness for terrorism.

"(2) CONTENTS.—The report shall—

"(A) include a priority ranking of essential capabilities in order to provide guidance to the Secretary and to the Congress on determining the appropriate allocation of, and funding levels for, first responder needs;

"(B) set forth a methodology by which any State or local government will be able to determine the extent to which it possesses or has access to the essential capabilities that States and local governments having similar risks should obtain;

"(C) describe the availability of national voluntary consensus standards, and whether there is a need for new national voluntary consensus standards, with respect to first responder training and equipment;

"(D) include such additional matters as the Secretary may specify in order to further the terrorism preparedness capabilities of first responders; and

"(E) include such revisions to the contents of past reports as are necessary to take into account changes in the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection or other relevant information as determined by the Secretary.

"(3) CONSISTENCY WITH FEDERAL WORKING GROUP.—The Task Force shall ensure that its recommendations for essential capabilities are, to the extent feasible, consistent with any preparedness goals or recommendations of the Federal working group established under section 319F(a) of the Public Health Service Act (42 U.S.C. 247d–6(a)).

"(4) COMPREHENSIVENESS.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness are made within the context of a comprehensive State emergency management system.

"(5) PRIOR MEASURES.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness take into account any capabilities that State or local officials have determined to be essential and have undertaken since September 11, 2001, to prevent or prepare for terrorist attacks.

"(c) MEMBERSHIP.—

"(1) IN GENERAL.—The Task Force shall consist of 25 members appointed by the Secretary, and shall, to the extent practicable, represent a geographic and substantive cross section of governmental and nongovernmental first responder disciplines from the State and local levels, including as appropriate—

"(A) members selected from the emergency response field, including fire service and law enforcement, hazardous materials response, emergency medical services, and emergency management personnel (including public works personnel routinely engaged in emergency response);

"(B) health scientists, emergency and inpatient medical providers, and public health professionals, including experts in emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

"(C) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus codes and standards development community, particularly those with expertise in first responder disciplines; and

"(D) State and local officials with expertise in terrorism preparedness, subject to the condition that if any such official is an elected official representing one of the two major political parties, an equal number of elected officials shall be selected from each such party.

"(2) COORDINATION WITH THE DEPARTMENT OF HEALTH AND HEALTH SERVICES.—In the selection of members of the Task Force who are health professionals, including emergency medical professionals, the Secretary shall coordinate the selection with the Secretary of Health and Human Services.

"(3) EX OFFICIO MEMBERS.—The Secretary and the Secretary of Health and Human Services shall each designate one or more officers of their respective Departments to serve as ex officio members of the Task Force. One of the ex officio members from the Department of Homeland Security shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act (5 App. U.S.C.).

"(d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding section 871(a), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, United States Code, shall apply to the Task Force.

"SEC. 1805. COVERED GRANT ELIGIBILITY AND CRITERIA.

"(a) GRANT ELIGIBILITY.—Any State, region, or directly eligible tribe shall be eligible to apply for a covered grant.

"(b) GRANT CRITERIA.—In awarding covered grants, the Secretary shall assist States and local governments in achieving, maintaining, and enhancing the essential capabilities for first responders established by the Secretary under section 1803.

"(c) STATE HOMELAND SECURITY PLANS.—

"(1) SUBMISSION OF PLANS.—The Secretary shall require that any State applying to the Secretary for a covered grant must submit to the Secretary a 3-year State homeland security plan that—

"(A) demonstrates the extent to which the State has achieved the essential capabilities that apply to the State;

"(B) demonstrates the needs of the State necessary to achieve, maintain, or enhance the essential capabilities that apply to the State;

"(C) includes a prioritization of such needs based on threat, vulnerability, and consequence assessment factors applicable to the State;

"(D) describes how the State intends—

"(i) to address such needs at the city, county, regional, tribal, State, and interstate level, including a precise description of any regional structure the State has established for the purpose of organizing homeland security preparedness activities funded by covered grants;

"(ii) to use all Federal, State, and local resources available for the purpose of addressing such needs; and

"(iii) to give particular emphasis to regional planning and cooperation, including the activities of multijurisdictional planning agencies governed by local officials, both within its jurisdictional borders and with neighboring States;

"(E) is developed in consultation with and subject to appropriate comment by local governments within the State; and

"(F) with respect to the emergency preparedness of first responders, addresses the unique aspects of terrorism as part of a comprehensive State emergency management plan.

"(2) APPROVAL BY SECRETARY.—The Secretary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

"(d) CONSISTENCY WITH STATE PLANS.—The Secretary shall ensure that each covered grant is used to supplement and support, in a consistent and coordinated manner, the applicable State homeland security plan or plans.

"(e) APPLICATION FOR GRANT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any State, region, or directly eligible tribe may apply for a covered grant by submitting to the Secretary an application at such time, in such manner, and containing such information as is required under this subsection, or as the Secretary may reasonably require.

"(2) DEADLINES FOR APPLICATIONS AND AWARDS.—All applications for covered grants must be submitted at such time as the Secretary may reasonably require for the fiscal year for which they are submitted. The Secretary shall award covered grants pursuant to all approved applications for such fiscal year as soon as practicable, but not later than March 1 of such year.

"(3) AVAILABILITY OF FUNDS.—All funds awarded by the Secretary under covered grants in a fiscal year shall be available for obligation through the end of the subsequent fiscal year.

"(4) MINIMUM CONTENTS OF APPLICATION.—The Secretary shall require that each applicant include in its application, at a minimum—

"(A) the purpose for which the applicant seeks covered grant funds and the reasons why the applicant needs the covered grant to meet the essential capabilities for terrorism preparedness within the State, region, or directly eligible tribe to which the application pertains;

"(B) a description of how, by reference to the applicable State homeland security plan or plans under subsection (c), the allocation of grant funding proposed in the application, including, where applicable, the amount not passed through under section 1806(g)(1), would assist in fulfilling the essential capabilities specified in such plan or plans;

"(C) a statement of whether a mutual aid agreement applies to the use of all or any portion of the covered grant funds;

"(D) if the applicant is a State, a description of how the State plans to allocate the covered grant funds to regions, local governments, and Indian tribes;

"(E) if the applicant is a region—

"(i) a precise geographical description of the region and a specification of all participating and nonparticipating local governments within the geographical area comprising that region;

"(ii) a specification of what governmental entity within the region will administer the expenditure of funds under the covered grant; and

"(iii) a designation of a specific individual to serve as regional liaison;

"(F) a capital budget showing how the applicant intends to allocate and expend the covered grant funds;

"(G) if the applicant is a directly eligible tribe, a designation of a specific individual to serve as the tribal liaison; and

"(H) a statement of how the applicant intends to meet the matching requirement, if any, that applies under section 1806(g)(2).

"(5) REGIONAL APPLICATIONS.—

"(A) RELATIONSHIP TO STATE APPLICATIONS.—A regional application—

"(i) shall be coordinated with an application submitted by the State or States of which such region is a part;

"(ii) shall supplement and avoid duplication with such State application; and

"(iii) shall address the unique regional aspects of such region's terrorism preparedness needs beyond those provided for in the application of such State or States.

"(B) STATE REVIEW AND SUBMISSION.—To ensure the consistency required under subsection (d) and the coordination required under subparagraph (A) of this paragraph, an applicant that is a region must submit its application to each State of which any part is included in the region for review and concurrence prior to the submission of such application to the Secretary. The regional application shall be transmitted to the Secretary through each such State within 30 days of its receipt, unless the Governor of such a State notifies the Secretary, in writing, that such regional application is inconsistent with the State's homeland security plan and provides an explanation of the reasons therefor.

"(C) DISTRIBUTION OF REGIONAL AWARDS.—If the Secretary approves a regional application, then the Secretary shall distribute a regional award to the State or States submitting the applicable regional application under subparagraph (B), and each such State shall, not later than the end of the 45-day period beginning on the date after receiving a regional award, pass through to the region all covered grant funds or resources purchased with such funds, except those funds necessary for the State to carry out its responsibilities with respect to such regional application; *Provided* That, in no such case shall the State or States pass through to the region less than 80 percent of the regional award.

"(D) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO REGIONS.—Any State that receives a regional award under subparagraph (C) shall certify to the Secretary, by not later than 30 days after the expiration of the period described in subparagraph (C) with respect to the grant, that the State has made available to the region the required funds and resources in accordance with subparagraph (C).

"(E) DIRECT PAYMENTS TO REGIONS.—If any State fails to pass through a regional award to a region as required by subparagraph (C) within 45 days after receiving such award and does not request or receive an extension of such period under section 1806(h)(2), the region may petition the Secretary to receive directly the portion of the regional award that is required to be passed through to such region under subparagraph (C).

"(F) REGIONAL LIAISONS.—A regional liaison designated under paragraph (4)(E)(iii) shall—

"(i) coordinate with Federal, State, local, regional, and private officials within the region concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region to assist in the development of the regional application and to improve the region's access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(6) TRIBAL APPLICATIONS.—

"(A) SUBMISSION TO THE STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a directly eligible tribe must submit its application to each State within the boundaries of which any part of such tribe is located for direct submission to the Department along with the application of such State or States.

"(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such tribe is located to comment to the Secretary on the consistency of the tribe's application with the State's homeland security plan. Any such comments shall be submitted to the Secretary concurrently with the submission of the State and tribal applications.

"(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans, and to approve any application of such tribe. The Secretary shall notify each State within the boundaries of which any part of such tribe is located of the approval of an application by such tribe.

"(D) TRIBAL LIAISON.—A tribal liaison designated under paragraph (4)(G) shall—

"(i) coordinate with Federal, State, local, regional, and private officials concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials to assist in the development of the application of such tribe and to improve the tribe's access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials, covered grants awarded to such tribe.

"(E) LIMITATION ON THE NUMBER OF DIRECT GRANTS.—The Secretary may make covered grants directly to not more than 20 directly eligible tribes per fiscal year.

"(F) TRIBES NOT RECEIVING DIRECT GRANTS.—An Indian tribe that does not receive a grant directly under this section is eligible to receive funds under a covered grant from the State or States within the boundaries of which any part of such tribe is located, consistent with the homeland security plan of the State as described in subsection (c). If a State fails to comply with section 1806(g)(1), the tribe may request payment under section 1806(h)(3) in the same manner as a local government.

"(7) EQUIPMENT STANDARDS.—If an applicant for a covered grant proposes to upgrade or purchase, with assistance provided under the grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards established by the Secretary under section 1807(a), the applicant shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.

"(f) FIRST RESPONDER GRANTS BOARD.—

"(1) ESTABLISHMENT OF BOARD.—The Secretary shall establish a First Responder Grants Board, consisting of—

"(A) the Secretary;

"(B) the Under Secretary for Emergency Preparedness and Response;

"(C) the Under Secretary for Border and Transportation Security;

"(D) the Under Secretary for Information Analysis and Infrastructure Protection;

"(E) the Under Secretary for Science and Technology; and

"(F) the Director of the Office for Domestic Preparedness.

"(2) CHAIRMAN.—

"(A) IN GENERAL.—The Secretary shall be the Chairman of the Board.

"(B) EXERCISE OF AUTHORITIES BY DEPUTY SECRETARY.—The Deputy Secretary of Homeland Security may exercise the authorities of the Chairman, if the Secretary so directs.

"(3) RANKING OF GRANT APPLICATIONS.—

"(A) PRIORITIZATION OF GRANTS.—The Board—

"(i) shall evaluate and annually prioritize all pending applications for covered grants based upon the degree to which they would, by achieving, maintaining, or enhancing the essential capabilities of the applicants on a nationwide basis, lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure; and

"(ii) in evaluating the threat to persons and critical infrastructure for purposes of prioritizing covered grants, shall give greater weight to threats of terrorism based on their specificity and credibility, including any pattern of repetition.

"(B) MINIMUM AMOUNTS.—After evaluating and prioritizing grant applications under subparagraph (A), the Board shall ensure that, for each fiscal year—

"(i) each of the States, other than the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, that has an approved State homeland security plan receives no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of needs under subsection (c)(1)(C);

"(ii) each of the States, other than the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, that has an approved State homeland security plan and that meets one or both of the additional high-risk qualifying criteria under subparagraph (C) receives no less than 0.45 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of needs under subsection (c)(1)(C);

"(iii) the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands each receives no less than 0.08 percent of the funds available for covered grants for that fiscal year for purposes of implementing its approved State homeland security plan in accordance with the prioritization of needs under subsection (c)(1)(C); and

"(iv) directly eligible tribes collectively receive no less than 0.08 percent of the funds available for covered grants for such fiscal year for purposes of addressing the needs identified in the applications of such tribes, consistent with the homeland security plan of each State within the boundaries of which any part of any such tribe is located, except that this clause shall not apply with respect to funds available for a fiscal year if the Secretary receives less than 5 applications for such fiscal year from such tribes under subsection (e)(6)(A) or does not approve at least one such application.

"(C) ADDITIONAL HIGH-RISK QUALIFYING CRITERIA.—For purposes of subparagraph (B)(ii), additional high-risk qualifying criteria consist of—

"(i) having a significant international land border; or

"(ii) adjoining a body of water within North America through which an international boundary line extends.

"(4) EFFECT OF REGIONAL AWARDS ON STATE MINIMUM.—Any regional award, or portion thereof, provided to a State under subsection (e)(5)(C) shall not be considered in calculating the minimum State award under paragraph (3)(B) of this subsection.

"(5) FUNCTIONS OF UNDER SECRETARIES.—The Under Secretaries referred to in paragraph (1) shall seek to ensure that the relevant expertise and input of the staff of their directorates are available to and considered by the Board.

"SEC. 1806. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

"(a) IN GENERAL.—A covered grant may be used for—

"(1) purchasing or upgrading equipment, including computer software, to enhance terrorism preparedness and response;

"(2) exercises to strengthen terrorism preparedness and response;

"(3) training for prevention (including detection) of, preparedness for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

"(4) developing or updating response plans;

"(5) establishing or enhancing mechanisms for sharing terrorism threat information;

"(6) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life-cycle systems design, product and technology evaluation, and prototype development for terrorism preparedness and response purposes;

"(7) additional personnel costs resulting from—

"(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

"(B) travel to and participation in exercises and training in the use of equipment and on prevention activities;

"(C) the temporary replacement of personnel during any period of travel to and participation in exercises and training in the use of equipment and on prevention activities; and

"(D) personnel engaged exclusively in counterterrorism and intelligence activities notwithstanding the date such personnel were hired;

"(8) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

"(9) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the cost of such measures may not exceed the greater of—

"(A) $1,000,000 per project; or

"(B) such greater amount as may be approved by the Secretary, which may not exceed 10 percent of the total amount of the covered grant;

"(10) the costs of commercially available interoperable communications equipment (which, where applicable, is based on national, voluntary consensus standards) that the Secretary, in consultation with the Chairman of the Federal Communications Commission, deems best suited to facilitate interoperability, coordination, and integration between and among emergency communications systems, and that complies with prevailing grant guidance of the Department for interoperable communications;

"(11) educational curricula development for first responders to ensure that they are prepared for terrorist attacks;

"(12) training and exercises to assist public elementary and secondary schools in developing and implementing programs to instruct students regarding age-appropriate skills to prepare for and respond to an act of terrorism;

"(13) paying of administrative expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant;

"(14) reimbursement for overtime and other fixed costs incurred for homeland security purposes after September 11, 2001; and

"(15) other appropriate activities as determined by the Secretary.

"(b) PROHIBITED USES.—Funds provided as a covered grant may not be used—

"(1) to supplant State or local funds;

"(2) to construct buildings or other physical facilities;

"(3) to acquire land; or

"(4) for any State or local government cost sharing contribution.

"(c) MULTIPLE-PURPOSE FUNDS.—Nothing in this section shall be construed to preclude State and local governments from using covered grant funds in a manner that also enhances first responder preparedness for emergencies and disasters unrelated to acts of terrorism, if such use assists such governments in achieving essential capabilities for terrorism preparedness established by the Secretary under section 1803.

"(d) REIMBURSEMENT OF COSTS.—In addition to the activities described in subsection (a), a covered grant may be used to provide a reasonable stipend to paid-on-call or volunteer first responders who are not otherwise compensated for travel to or participation in training covered by this section. Any such reimbursement shall not be considered compensation for purposes of rendering such a first responder an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

"(e) ASSISTANCE REQUIREMENT.—The Secretary may not request that equipment paid for, wholly or in part, with funds provided as a covered grant be made available for responding to emergencies in surrounding States, regions, and localities, unless the Secretary undertakes to pay the costs directly attributable to transporting and operating such equipment during such response.

"(f) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by the recipient of a covered grant, the Secretary may authorize the grantee to transfer all or part of funds provided as the covered grant from uses specified in the grant agreement to other uses authorized under this section, if the Secretary determines that such transfer is in the interests of homeland security.

"(g) STATE, REGIONAL, AND TRIBAL RESPONSIBILITIES.—

"(1) PASS-THROUGH.—The Secretary shall require a recipient of a covered grant that is a State to obligate or otherwise make available to local governments, first responders, and other local groups, to the extent required under the State homeland security plan or plans specified in the application for the grant, not less than 80 percent of the grant funds, resources purchased with the grant funds having a value equal to at least 80 percent of the amount of the grant, or a combination thereof, by not later than the end of the 45-day period beginning on the date the grant recipient receives the grant funds.

"(2) COST SHARING.—

"(A) IN GENERAL.—The Federal share of the costs of an activity carried out with a covered grant to a State, region, or directly eligible tribe awarded after the 2-year period beginning on the date of the enactment of this section shall not exceed 75 percent.

"(B) INTERIM RULE.—The Federal share of the costs of an activity carried out with a covered grant awarded before the end of the 2-year period beginning on the date of the enactment of this section shall be 100 percent.

"(C) IN-KIND MATCHING.—Each recipient of a covered grant may meet the matching requirement under subparagraph (A) by making in-kind contributions of goods or services that are directly linked with the purpose for which the grant is made, including, but not limited to, any necessary personnel overtime, contractor services, administrative costs, equipment fuel and maintenance, and rental space.

"(3) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL GOVERNMENTS.—Any State that receives a covered grant shall certify to the Secretary, by not later than 30 days after the expiration of the period described in paragraph (1) with respect to the grant, that the State has made available for expenditure by local governments, first responders, and other local groups the required amount of grant funds pursuant to paragraph (1).

"(4) QUARTERLY REPORT ON HOMELAND SECURITY SPENDING.—The Federal share described in paragraph (2)(A) may be increased by up to 2 percent for any State, region, or directly eligible tribe that, not later than 30 days after the end of each fiscal quarter, submits to the Secretary a report on that fiscal quarter. Each such report must include, for each recipient of a covered grant or a pass-through under paragraph (1)—

"(A) the amount obligated to that recipient in that quarter;

"(B) the amount expended by that recipient in that quarter; and

"(C) a summary description of the items purchased by such recipient with such amount.

"(5) ANNUAL REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a covered grant shall submit an annual report to the Secretary not later than 60 days after the end of each fiscal year. Each recipient of a covered grant that is a region must simultaneously submit its report to each State of which any part is included in the region. Each recipient of a covered grant that is a directly eligible tribe must simultaneously submit its report to each State within the boundaries of which any part of such tribe is located. Each report must include the following:

"(A) The amount, ultimate recipients, and dates of receipt of all funds received under the grant during the previous fiscal year.

"(B) The amount and the dates of disbursements of all such funds expended in compliance with paragraph (1) or pursuant to mutual aid agreements or other sharing arrangements that apply within the State, region, or directly eligible tribe, as applicable, during the previous fiscal year.

"(C) How the funds were utilized by each ultimate recipient or beneficiary during the preceding fiscal year.

"(D) The extent to which essential capabilities identified in the applicable State homeland security plan or plans were achieved, maintained, or enhanced as the result of the expenditure of grant funds during the preceding fiscal year.

"(E) The extent to which essential capabilities identified in the applicable State homeland security plan or plans remain unmet.

"(6) INCLUSION OF RESTRICTED ANNEXES.—A recipient of a covered grant may submit to the Secretary an annex to the annual report under paragraph (5) that is subject to appropriate handling restrictions, if the recipient believes that discussion in the report of unmet needs would reveal sensitive but unclassified information.

"(7) PROVISION OF REPORTS.—The Secretary shall ensure that each annual report under paragraph (5) is provided to the Under Secretary for Emergency Preparedness and Response and the Director of the Office for Domestic Preparedness.

"(h) INCENTIVES TO EFFICIENT ADMINISTRATION OF HOMELAND SECURITY GRANTS.—

"(1) PENALTIES FOR DELAY IN PASSING THROUGH LOCAL SHARE.—If a recipient of a covered grant that is a State fails to pass through to local governments, first responders, and other local groups funds or resources required by subsection (g)(1) within 45 days after receiving funds under the grant, the Secretary may—

"(A) reduce grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1);

"(B) terminate payment of funds under the grant to the recipient, and transfer the appropriate portion of those funds directly to local first responders that were intended to receive funding under that grant; or

"(C) impose additional restrictions or burdens on the recipient's use of funds under the grant, which may include—

"(i) prohibiting use of such funds to pay the grant recipient's grant-related overtime or other expenses;

"(ii) requiring the grant recipient to distribute to local government beneficiaries all or a portion of grant funds that are not required to be passed through under subsection (g)(1); or

"(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with subsection (g)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

"(2) EXTENSION OF PERIOD.—The Governor of a State may request in writing that the Secretary extend the 45-day period under section 1805(e)(5)(E) or paragraph (1) for an additional 15-day period. The Secretary may approve such a request, and may extend such period for additional 15-day periods, if the Secretary determines that the resulting delay in providing grant funding to the local government entities that will receive funding under the grant will not have a significant detrimental impact on such entities' terrorism preparedness efforts.

"(3) PROVISION OF NON-LOCAL SHARE TO LOCAL GOVERNMENT.—

"(A) IN GENERAL.—The Secretary may upon request by a local government pay to the local government a portion of the amount of a covered grant awarded to a State in which the local government is located, if—

"(i) the local government will use the amount paid to expedite planned enhancements to its terrorism preparedness as described in any applicable State homeland security plan or plans;

"(ii) the State has failed to pass through funds or resources in accordance with subsection (g)(1); and

"(iii) the local government complies with subparagraphs (B) and (C).

"(B) SHOWING REQUIRED.—To receive a payment under this paragraph, a local government must demonstrate that—

"(i) it is identified explicitly as an ultimate recipient or intended beneficiary in the approved grant application;

"(ii) it was intended by the grantee to receive a severable portion of the overall grant for a specific purpose that is identified in the grant application;

"(iii) it petitioned the grantee for the funds or resources after expiration of the period within which the funds or resources were required to be passed through under subsection (g)(1); and

"(iv) it did not receive the portion of the overall grant that was earmarked or designated for its use or benefit.

"(C) EFFECT OF PAYMENT.—Payment of grant funds to a local government under this paragraph—

"(i) shall not affect any payment to another local government under this paragraph; and

"(ii) shall not prejudice consideration of a request for payment under this paragraph that is submitted by another local government.

"(D) DEADLINE FOR ACTION BY SECRETARY.—The Secretary shall approve or disapprove each request for payment under this paragraph by not later than 15 days after the date the request is received by the Department.

"(i) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to the Congress by December 31 of each year—

"(1) describing in detail the amount of Federal funds provided as covered grants that were directed to each State, region, and directly eligible tribe in the preceding fiscal year;

"(2) containing information on the use of such grant funds by grantees; and

"(3) describing—

"(A) the Nation's progress in achieving, maintaining, and enhancing the essential capabilities established under section 1803(a) as a result of the expenditure of covered grant funds during the preceding fiscal year; and

"(B) an estimate of the amount of expenditures required to attain across the United States the essential capabilities established under section 1803(a).

"SEC. 1807. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

"(a) EQUIPMENT STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office for Domestic Preparedness, shall, not later than 6 months after the date of enactment of this section, support the development of, promulgate, and update as necessary national voluntary consensus standards for the performance, use, and validation of first responder equipment for purposes of section 1805(e)(7). Such standards—

"(A) shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards;

"(B) shall take into account, as appropriate, new types of terrorism threats that may not have been contemplated when such existing standards were developed;

"(C) shall be focused on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety; and

"(D) shall cover all appropriate uses of the equipment.

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary shall specifically consider the following categories of first responder equipment:

"(A) Thermal imaging equipment.

"(B) Radiation detection and analysis equipment.

"(C) Biological detection and analysis equipment.

"(D) Chemical detection and analysis equipment.

"(E) Decontamination and sterilization equipment.

"(F) Personal protective equipment, including garments, boots, gloves, and hoods and other protective clothing.

"(G) Respiratory protection equipment.

"(H) Interoperable communications, including wireless and wireline voice, video, and data networks.

"(I) Explosive mitigation devices and explosive detection and analysis equipment.

"(J) Containment vessels.

"(K) Contaminant-resistant vehicles.

"(L) Such other equipment for which the Secretary determines that national voluntary consensus standards would be appropriate.

"(b) TRAINING STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office for Domestic Preparedness, shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for first responder training carried out with amounts provided under covered grant programs, that will enable State and local government first responders to achieve optimal levels of terrorism preparedness as quickly as practicable. Such standards shall give priority to providing training to—

"(A) enable first responders to prevent, prepare for, respond to, and mitigate terrorist threats, including threats from chemical, biological, nuclear, and radiological weapons and explosive devices capable of inflicting significant human casualties; and

"(B) familiarize first responders with the proper use of equipment, including software, developed pursuant to the standards established under subsection (a).

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary specifically shall include the following categories of first responder activities:

"(A) Regional planning.

"(B) Joint exercises.

"(C) Intelligence collection, analysis, and sharing.

"(D) Emergency notification of affected populations.

"(E) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

"(F) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

"(3) CONSISTENCY.—In carrying out this subsection, the Secretary shall ensure that such training standards are consistent with the principles of emergency preparedness for all hazards.

"(c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

"(1) the National Institute of Standards and Technology;

"(2) the National Fire Protection Association;

"(3) the National Association of County and City Health Officials;
"(4) the Association of State and Territorial Health Officials;
"(5) the American National Standards Institute;
"(6) the National Institute of Justice;
"(7) the Inter-Agency Board for Equipment Standardization and Interoperability;
"(8) the National Public Health Performance Standards Program;
"(9) the National Institute for Occupational Safety and Health;
"(10) ASTM International;
"(11) the International Safety Equipment Association;
"(12) the Emergency Management Accreditation Program; and
"(13) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

"(d) COORDINATION WITH SECRETARY OF HHS.—In establishing any national voluntary consensus standards under this section for first responder equipment or training that involve or relate to health professionals, including emergency medical professionals, the Secretary shall coordinate activities under this section with the Secretary of Health and Human Services.".

(b) DEFINITION OF EMERGENCY RESPONSE PROVIDERS.—Paragraph (6) of section 2 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101(6)) is amended by striking "includes" and all that follows and inserting "includes Federal, State, and local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, and authorities.".

(c) TEMPORARY LIMITATIONS ON APPLICATION.—

(1) 1-YEAR DELAY IN APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as amended by subsection (a), shall not apply during the 1-year period beginning on the date of the enactment of this Act:

(A) Subsections (b), (c), and (e)(4)(A) and (B) of section 1805.

(B) In section 1805(f)(3)(A), the phrase ", by enhancing the essential capabilities of the applicants,".

(2) 2-YEAR DELAY IN APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as amended by subsection (a), shall not apply during the 2-year period beginning on the date of the enactment of this Act:

(A) Subparagraphs (D) and (E) of section 1806(g)(5).

(B) Section 1806(i)(3).

SEC. 5004. MODIFICATION OF HOMELAND SECURITY ADVISORY SYSTEM.

(a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 121 et seq.) is amended by adding at the end the following:

"SEC. 203. HOMELAND SECURITY ADVISORY SYSTEM.

"(a) IN GENERAL.—The Secretary shall revise the Homeland Security Advisory System referred to in section 201(d)(7) to require that any designation of a threat level or other warning shall be accompanied by a designation of the geographic regions or economic sectors to which the designation applies.

"(b) REPORTS.—The Secretary shall report to the Congress annually by not later than December 31 each year regarding the geographic region-specific warnings and economic sector-specific warnings issued during the preceding fiscal year under the Homeland Security Advisory System referred to in section 201(d)(7), and the bases for such warnings. The report shall be submitted in unclassified form and may, as necessary, include a classified annex.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 202 the following:

"203. Homeland Security Advisory System.".

SEC. 5005. COORDINATION OF INDUSTRY EFFORTS.

Section 102(f) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 112(f)) is amended by striking "and" after the semicolon at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and by adding at the end the following:

"(8) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack.".

SEC. 5006. SUPERSEDED PROVISION.

This subtitle supersedes section 1014 of Public Law 107–56.

SEC. 5007. SENSE OF CONGRESS REGARDING INTEROPERABLE COMMUNICATIONS.

(a) FINDING.—The Congress finds that—

(1) many first responders working in the same jurisdiction or in different jurisdictions cannot effectively and efficiently communicate with one another; and

(2) their inability to do so threatens the public's safety and may result in unnecessary loss of lives and property.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that interoperable emergency communications systems and radios should continue to be deployed as soon as practicable for use by the first responder community, and that upgraded and new digital communications systems and new digital radios must meet prevailing national, voluntary consensus standards for interoperability.

SEC. 5008. SENSE OF CONGRESS REGARDING CITIZEN CORPS COUNCILS.

(a) FINDING.—The Congress finds that Citizen Corps councils help to enhance local citizen participation in terrorism preparedness by coordinating multiple Citizen Corps programs, developing community action plans, assessing possible threats, and identifying local resources.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that individual Citizen Corps councils should seek to enhance the preparedness and response capabilities of all organizations participating in the councils, including by providing funding to as many of their participating organizations as practicable to promote local terrorism preparedness programs.

SEC. 5009. STUDY REGARDING NATIONWIDE EMERGENCY NOTIFICATION SYSTEM.

(a) STUDY.—The Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies and representatives of providers and participants in the telecommunications industry, shall conduct a study to determine whether it is cost-effective, efficient, and feasible to establish and implement an emergency telephonic alert notification system that will—

(1) alert persons in the United States of imminent or current hazardous events caused by acts of terrorism; and

(2) provide information to individuals regarding appropriate measures that may be undertaken to alleviate or minimize threats to their safety and welfare posed by such events.

(b) TECHNOLOGIES TO CONSIDER.—In conducting the study, the Secretary shall consider the use of the telephone, wireless communications, and other existing communications networks to provide such notification.

(c) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report regarding the conclusions of the study.

SEC. 5010. REQUIRED COORDINATION.

The Secretary of Homeland Security shall ensure that there is effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism and other major disasters and emergencies among the divisions of the Department of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office for State and Local Government Coordination and Preparedness.

Subtitle B—Government Reorganization Authority

SEC. 5021. AUTHORIZATION OF INTELLIGENCE COMMUNITY REORGANIZATION PLANS.

(a) REORGANIZATION PLANS.—Section 903(a)(2) of title 5, United States Code, is amended to read as follows:

"(2) the abolition of all or a part of the functions of an agency;".

(b) REPEAL OF LIMITATIONS.—Section 905 of title 5, United States Code, is amended to read as follows:

"§ 905. Limitation on authority.

"The authority to submit reorganization plans under this chapter is limited to the following organizational units:

"(1) The Office of the National Intelligence Director.

"(2) The Central Intelligence Agency.

"(3) The National Security Agency.

"(4) The Defense Intelligence Agency.

"(5) The National Geospatial-Intelligence Agency.

"(6) The National Reconnaissance Office.

"(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

"(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

"(9) The Bureau of Intelligence and Research of the Department of State.

"(10) The Office of Intelligence Analysis of the Department of Treasury.

"(11) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

"(12) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.".

(c) REORGANIZATION PLANS.—903(a) of title 5, United States Code, is amended—

(1) in paragraph (5), by striking "or" after the semicolon;

(2) in paragraph (6), by striking the period and inserting "; or"; and

(3) by inserting after paragraph (6) the following:

"(7) the creation of an agency.".

(d) APPLICATION OF CHAPTER.—Chapter 9 of title 5, United States Code, is amended by adding at the end the following:

"§ 913. Application of chapter

"This chapter shall apply to any reorganization plan transmitted to Congress in accordance with section 903(b) on or after the date of enactment of this section.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 9 of title 5, United States Code, is amended by adding after the item relating to section 912 the following:

"913. Application of chapter.".

(2) REFERENCES.—Chapter 9 of title 5, United States Code, is amended—

(A) in section 908(1), by striking "on or before December 31, 1984"; and

(B) in section 910, by striking "Government Operations" each place it appears and inserting "Government Reform".

(3) DATE MODIFICATION.—Section 909 of title 5, United States Code, is amended in the first sentence by striking "19" and inserting "20".

SEC. 5022. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

(a) FINDING.—Congress finds that there is a public interest in protecting high-risk nonprofit organizations from international terrorist attacks that would disrupt the vital services such organizations provide to the people of the United States and threaten the lives and well-being of United States citizens who operate, utilize, and live or work in proximity to such organizations.

(b) PURPOSES.—The purposes of this section are to—

(1) establish within the Department of Homeland Security a program to protect United States citizens at or near high-risk nonprofit organizations from international terrorist attacks through loan guarantees and Federal contracts for security enhancements and technical assistance;

(2) establish a program within the Department of Homeland Security to provide grants to local governments to assist with incremental costs associated with law enforcement in areas in which there are a high concentration of high-risk nonprofit organizations vulnerable to international terrorist attacks; and

(3) establish an Office of Community Relations and Civic Affairs within the Department of Homeland Security to focus on security needs of high-risk nonprofit organizations with respect to international terrorist threats.

(c) AUTHORITY.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), as amended by this Act, is further amended by adding at the end the following:

"TITLE XIX—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

"SEC. 1901. DEFINITIONS.

" In this title:

"(1) CONTRACT.—The term 'contract' means a contract between the Federal Government and a contractor selected from the list of certified contractors to

perform security enhancements or provide technical assistance approved by the Secretary under this title.

"(2) FAVORABLE REPAYMENT TERMS.—The term 'favorable repayment terms' means the repayment terms of loans offered to nonprofit organizations under this title that—

"(A) are determined by the Secretary, in consultation with the Secretary of the Treasury, to be favorable under current market conditions;

"(B) have interest rates at least 1 full percentage point below the market rate; and

"(C) provide for repayment over a term not less than 25 years.

"(3) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means an organization that—

"(A) is described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

"(B) is designated by the Secretary under section 1903(a).

"(4) SECURITY ENHANCEMENTS.—The term 'security enhancements'—

"(A) means the purchase and installation of security equipment in real property (including buildings and improvements), owned or leased by a nonprofit organization, specifically in response to the risk of attack at a nonprofit organization by an international terrorist organization;

"(B) includes software security measures; and

"(C) does not include enhancements that would otherwise have been reasonably necessary due to nonterrorist threats.

"(5) TECHNICAL ASSISTANCE.—The term 'technical assistance'—

"(A) means guidance, assessment, recommendations, and any other provision of information or expertise which assists nonprofit organizations in—

"(i) identifying security needs;

"(ii) purchasing and installing security enhancements;

"(iii) training employees to use and maintain security enhancements; or

"(iv) training employees to recognize and respond to international terrorist threats; and

"(B) does not include technical assistance that would otherwise have been reasonably necessary due to nonterrorist threats.

"SEC. 1902. AUTHORITY TO ENTER INTO CONTRACTS AND ISSUE FEDERAL LOAN GUARANTEES.

"(a) IN GENERAL.—The Secretary may—

"(1) enter into contracts with certified contractors for security enhancements and technical assistance for nonprofit organizations; and

"(2) issue Federal loan guarantees to financial institutions in connection with loans made by such institutions to nonprofit organizations for security enhancements and technical assistance.

"(b) LOANS.—The Secretary may guarantee loans under this title—

"(1) only to the extent provided for in advance by appropriations Acts; and

"(2) only to the extent such loans have favorable repayment terms.

"SEC. 1903. ELIGIBILITY CRITERIA.

"(a) IN GENERAL.—The Secretary shall designate nonprofit organizations as high-risk nonprofit organizations eligible for contracts or loans under this title based on the vulnerability of the specific site of the nonprofit organization to international terrorist attacks.

"(b) VULNERABILITY DETERMINATION.—In determining vulnerability to international terrorist attacks and eligibility for security enhancements or technical assistance under this title, the Secretary shall consider—

"(1) threats of international terrorist organizations (as designated by the State Department) against any group of United States citizens who operate or are the principal beneficiaries or users of the nonprofit organization;

"(2) prior attacks, within or outside the United States, by international terrorist organizations against the nonprofit organization or entities associated with or similarly situated as the nonprofit organization;

"(3) the symbolic value of the site as a highly recognized United States cultural or historical institution that renders the site a possible target of international terrorism;

"(4) the role of the nonprofit organization in responding to international terrorist attacks; and

"(5) any recommendations of the applicable State Homeland Security Authority established under section 1906 or Federal, State, and local law enforcement authorities.

"(c) DOCUMENTATION.—In order to be eligible for security enhancements, technical assistance or loan guarantees under this title, the nonprofit organization shall provide the Secretary with documentation that—

"(1) the nonprofit organization hosted a gathering of at least 100 or more persons at least once each month at the nonprofit organization site during the preceding 12 months; or

"(2) the nonprofit organization provides services to at least 500 persons each year at the nonprofit organization site.

"(d) TECHNICAL ASSISTANCE ORGANIZATIONS.—If 2 or more nonprofit organizations establish another nonprofit organization to provide technical assistance, that established organization shall be eligible to receive security enhancements and technical assistance under this title based upon the collective risk of the nonprofit organizations it serves.

"SEC. 1904. USE OF LOAN GUARANTEES.

"Funds borrowed from lending institutions, which are guaranteed by the Federal Government under this title, may be used for technical assistance and security enhancements.

"SEC. 1905. NONPROFIT ORGANIZATION APPLICATIONS.

"(a) IN GENERAL.—A nonprofit organization desiring assistance under this title shall submit a separate application for each specific site needing security enhancements or technical assistance.

"(b) CONTENT.—Each application shall include—

"(1) a detailed request for security enhancements and technical assistance, from a list of approved enhancements and assistance issued by the Secretary under this title;

"(2) a description of the intended uses of funds to be borrowed under Federal loan guarantees; and

"(3) such other information as the Secretary shall require.

"(c) JOINT APPLICATION.—Two or more nonprofit organizations located on contiguous sites may submit a joint application.

"SEC. 1906. REVIEW BY STATE HOMELAND SECURITY AUTHORITIES.

"(a) ESTABLISHMENT OF STATE HOMELAND SECURITY AUTHORITIES.—In accordance with regulations prescribed by the Secretary, each State may establish a State Homeland Security Authority to carry out this title.

"(b) APPLICATIONS.—

"(1) SUBMISSION.—Applications shall be submitted to the applicable State Homeland Security Authority.

"(2) EVALUATION.—After consultation with Federal, State, and local law enforcement authorities, the State Homeland Security Authority shall evaluate all applications using the criteria under section 1903 and transmit all qualifying applications to the Secretary ranked by severity of risk of international terrorist attack.

"(3) APPEAL.—An applicant may appeal the finding that an application is not a qualifying application to the Secretary under procedures that the Secretary shall issue by regulation not later than 90 days after the date of enactment of this title.

"SEC. 1907. SECURITY ENHANCEMENT AND TECHNICAL ASSISTANCE CONTRACTS AND LOAN GUARANTEES.

"(a) IN GENERAL.—Upon receipt of the applications, the Secretary shall select applications for execution of security enhancement and technical assistance contracts, or issuance of loan guarantees, giving preference to the nonprofit organizations determined to be at greatest risk of international terrorist attack based on criteria under section 1903.

"(b) SECURITY ENHANCEMENTS AND TECHNICAL ASSISTANCE; FOLLOWED BY LOAN GUARANTEES.—The Secretary shall execute security enhancement and technical assistance contracts for the highest priority applicants until available funds are expended, after which loan guarantees shall be made available for additional applicants determined to be at high risk, up to the authorized amount of loan guarantees. The Secretary may provide with respect to a single application a combination of such contracts and loan guarantees.

"(c) JOINT APPLICATIONS.—Special preference shall be given to joint applications submitted on behalf of multiple nonprofit organizations located in contiguous settings.

"(d) MAXIMIZING AVAILABLE FUNDS.—Subject to subsection (b), the Secretary shall execute security enhancement and technical assistance contracts in such amounts as to maximize the number of high-risk applicants nationwide receiving assistance under this title.

"(e) APPLICANT NOTIFICATION.—Upon selecting a nonprofit organization for assistance under this title, the Secretary shall notify the nonprofit organization that the Federal Government is prepared to enter into a contract with certified contractors to install specified security enhancements or provide specified technical assistance at the site of the nonprofit organization.

"(f) CERTIFIED CONTRACTORS.—

"(1) IN GENERAL.—Upon receiving a notification under subsection (e), the nonprofit organization shall select a certified contractor to perform the specified security enhancements, from a list of certified contractors issued and maintained by the Secretary under subsection (j).

"(2) LIST.—The list referred to in paragraph (1) shall be comprised of contractors selected on the basis of—

"(A) technical expertise;

"(B) performance record including quality and timeliness of work performed;

"(C) adequacy of employee criminal background checks; and

"(D) price competitiveness.

"(3) OTHER CERTIFIED CONTRACTORS.—The Secretary shall include on the list of certified contractors additional contractors selected by senior officials at State Homeland Security Authorities and the chief executives of county and other local jurisdictions. Such additional certified contractors shall be selected on the basis of the criteria under paragraph (2).

"(g) ENSURING THE AVAILABILITY OF CONTRACTORS.—If the list of certified contractors under this section does not include any contractors who can begin work on the security enhancements or technical assistance within 60 days after applicant notification, the nonprofit organization may submit a contractor not currently on the list to the Secretary for the Secretary's review. If the Secretary does not include the submitted contractor on the list of certified contractors within 60 days after the submission and does not place an alternative contractor on the list within the same time period (who would be available to begin the specified work within that 60-day period), the Secretary shall immediately place the submitted contractor on the list of certified contractors and such contractor shall remain on such list until—

"(1) the specified work is completed; or

"(2) the Secretary can show cause why such contractor may not retain certification, with such determinations subject to review by the Comptroller General of the United States.

"(h) CONTRACTS.—Upon selecting a certified contractor to provide security enhancements and technical assistance approved by the Secretary under this title, the nonprofit organization shall notify the Secretary of such selection. The Secretary shall deliver a contract to such contractor within 10 business days after such notification.

"(i) CONTRACTS FOR ADDITIONAL WORK OR UPGRADES.—A nonprofit organization, using its own funds, may enter into an additional contract with the certified contractor, for additional or upgraded security enhancements or technical assistance. Such additional contracts shall be separate contracts between the nonprofit organization and the contractor.

"(j) EXPEDITING ASSISTANCE.—In order to expedite assistance to nonprofit organizations, the Secretary shall—

"(1) compile a list of approved technical assistance and security enhancement activities within 45 days after the date of enactment of this title;

"(2) publish in the Federal Register within 60 days after such date of enactment a request for contractors to submit applications to be placed on the list of certified contractors under this section;

"(3) after consultation with the Secretary of the Treasury, publish in the Federal Register within 60 days after such date of enactment, prescribe regulations setting forth the conditions under which loan guarantees shall be issued under this title, including application procedures, expeditious review of applications, underwriting criteria, assignment of loan guarantees, modifications, commercial validity, defaults, and fees; and

"(4) publish in the Federal Register within 120 days after such date of enactment (and every 30 days thereafter) a list of certified contractors, including those selected by State Homeland Security Authorities, county, and local officials, with coverage of all 50 States, the District of Columbia, and the territories.

"SEC. 1908. LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.

"(a) IN GENERAL.—The Secretary may provide grants to units of local government to offset incremental costs associated with law enforcement in areas where there is a high concentration of nonprofit organizations.

"(b) USE.—Grant funds received under this section may be used only for personnel costs or for equipment needs specifically related to such incremental costs.

"(c) MAXIMIZATION OF IMPACT.—The Secretary shall award grants in such amounts as to maximize the impact of available funds in protecting nonprofit organizations nationwide from international terrorist attacks.

"SEC. 1909. OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.

"(a) IN GENERAL.—There is established within the Department, the Office of Community Relations and Civic Affairs to administer grant programs for nonprofit organizations and local law enforcement assistance.

"(b) ADDITIONAL RESPONSIBILITIES.—The Office of Community Relations and Civic Affairs shall—

"(1) coordinate community relations efforts of the Department;

"(2) serve as the official liaison of the Secretary to the nonprofit, human and social services, and faith-based communities; and

"(3) assist in coordinating the needs of those communities with the Citizen Corps program.

"SEC. 1910. AUTHORIZATION OF APPROPRIATIONS AND LOAN GUARANTEES.

"(a) NONPROFIT ORGANIZATIONS PROGRAM.—There are authorized to be appropriated to the Department to carry out the nonprofit organization program under this title, $100,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(b) LOCAL LAW ENFORCEMENT ASSISTANCE GRANTS.—There are authorized to be appropriated to the Department for local law enforcement assistance grants under section 1908, $50,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(c) OFFICE OF COMMUNITY RELATIONS AND CIVIC AFFAIRS.—There are authorized to be appropriated to the Department for the Office of Community Relations and Civic Affairs under section 1909, $5,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 and 2007.

"(d) LOAN GUARANTEES.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each of fiscal years 2005, 2006, and 2007, such amounts as may be required under the Federal Credit Act with respect to Federal loan guarantees authorized by this title, which shall remain available until expended.

"(2) LIMITATION.—The aggregate value of all loans for which loan guarantees are issued under this title by the Secretary may not exceed $250,000,000 in each of fiscal years 2005, 2006, and 2007.".

(d) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by adding at the end the following:

"TITLE XIX—PROTECTION OF CITIZENS AT HIGH-RISK NONPROFIT ORGANIZATIONS

"Sec. 1901. Definitions.
"Sec. 1902. Authority to enter into contracts and issue Federal loan guarantees.
"Sec. 1903. Eligibility criteria.
"Sec. 1904. Use of loan guarantees.
"Sec. 1905. Nonprofit organization applications.
"Sec. 1906. Review by State Homeland Security Authorities.
"Sec. 1907. Security enhancement and technical assistance contracts and loan guarantees.
"Sec. 1908. Local law enforcement assistance grants.
"Sec. 1909. Office of Community Relations and Civic Affairs.
"Sec. 1910. Authorization of appropriations and loan guarantees.".

Subtitle C—Restructuring Relating to the Department of Homeland Security and Congressional Oversight

SEC. 5025. RESPONSIBILITIES OF COUNTERNARCOTICS OFFICE.

(a) AMENDMENT.—Section 878 of the Homeland Security Act of 2002 (6 U.S.C. 458) is amended to read as follows:

"SEC. 878. OFFICE OF COUNTERNARCOTICS ENFORCEMENT.

"(a) OFFICE.—There shall be in the Department an Office of Counternarcotics Enforcement, which shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate.

"(b) ASSIGNMENT OF PERSONNEL.—(1) The Secretary shall assign to the Office permanent staff and other appropriate personnel detailed from other subdivisions of the Department to carry out responsibilities under this section.

"(2) The Secretary shall designate senior employees from each appropriate subdivision of the Department that has significant counternarcotics responsibilities to act as a liaison between that subdivision and the Office of Counternarcotics Enforcement.

"(c) LIMITATION ON CONCURRENT EMPLOYMENT.—Except as provided in subsection (d), the Director of the Office of Counternarcotics Enforcement shall not be employed by, assigned to, or serve as the head of, any other branch of the Federal Government, any State or local government, or any subdivision of the Department other than the Office of Counternarcotics Enforcement.

"(d) ELIGIBILITY TO SERVE AS THE UNITED STATES INTERDICTION COORDINATOR.—The Director of the Office of Counternarcotics Enforcement may be appointed as the United States Interdiction Coordinator by the Director of the Office of National Drug Control Policy, and shall be the only person at the Department eligible to be so appointed.

"(e) RESPONSIBILITIES.—The Secretary shall direct the Director of the Office of Counternarcotics Enforcement—

"(1) to coordinate policy and operations within the Department, between the Department and other Federal departments and agencies, and between the Department and State and local agencies with respect to stopping the entry of illegal drugs into the United States;

"(2) to ensure the adequacy of resources within the Department for stopping the entry of illegal drugs into the United States;

"(3) to recommend the appropriate financial and personnel resources necessary to help the Department better fulfill its responsibility to stop the entry of illegal drugs into the United States;

"(4) within the JTTF construct to track and sever connections between illegal drug trafficking and terrorism; and

"(5) to be a representative of the Department on all task forces, committees, or other entities whose purpose is to coordinate the counternarcotics enforcement activities of the Department and other Federal, state or local agencies.

"(f) REPORTS TO CONGRESS.—

"(1) ANNUAL BUDGET REVIEW.—The Director of the Office of Counternarcotics Enforcement shall, not later than 30 days after the submission by the President to Congress of any request for expenditures for the Department, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of such request. The review and evaluation shall—

"(A) identify any request or subpart of any request that affects or may affect the counternarcotics activities of the Department or any of its subdivisions, or that affects the ability of the Department or any subdivision of the Department to meet its responsibility to stop the entry of illegal drugs into the United States;

"(B) describe with particularity how such requested funds would be or could be expended in furtherance of counternarcotics activities; and

"(C) compare such requests with requests for expenditures and amounts appropriated by Congress in the previous fiscal year.

"(2) EVALUATION OF COUNTERNARCOTICS ACTIVITIES.—The Director of the Office of Counternarcotics Enforcement shall, not later than February 1 of each year, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of the counternarcotics activities of the Department for the previous fiscal year. The review and evaluation shall—

"(A) describe the counternarcotics activities of the Department and each subdivision of the Department (whether individually or in cooperation with other subdivisions of the Department, or in cooperation with other branches of the Federal Government or with State or local agencies), including the methods, procedures, and systems (including computer systems) for collecting, analyzing, sharing, and disseminating information concerning narcotics activity within the Department and between the Department and other Federal, State, and local agencies;

"(B) describe the results of those activities, using quantifiable data whenever possible;

"(C) state whether those activities were sufficient to meet the responsibility of the Department to stop the entry of illegal drugs into the United States, including a description of the performance measures of effectiveness that were used in making that determination; and

"(D) recommend, where appropriate, changes to those activities to improve the performance of the Department in meeting its responsibility to stop the entry of illegal drugs into the United States.

"(3) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—Any content of a review and evaluation described in the reports required in this subsection that involves information classified under criteria established by an Executive order, or whose public disclosure, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to Congress separately from the rest of the review and evaluation.".

(b) CONFORMING AMENDMENT.—Section 103(a) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)) is amended—

(1) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(2) by inserting after paragraph (7) the following new paragraph (8):

"(8) A Director of the Office of Counternarcotics Enforcement.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts appropriated for the Department of Homeland Security for Departmental management and operations for fiscal year 2005, there is authorized up to $6,000,000 to carry out section 878 of the Department of Homeland Security Act of 2002 (as amended by this section).

SEC. 5026. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

(a) IN GENERAL.—Subtitle E of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 411 and following) is amended by adding at the end the following:

"SEC. 843. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

"(a) IN GENERAL.—Each subdivision of the Department that is a National Drug Control Program Agency shall include as one of the criteria in its performance appraisal system, for each employee directly or indirectly involved in the enforcement of Federal, State, or local narcotics laws, the performance of that employee with respect to the enforcement of Federal, State, or local narcotics laws, relying to the greatest extent practicable on objective performance measures, including—

"(1) the contribution of that employee to seizures of narcotics and arrests of violators of Federal, State, or local narcotics laws; and

"(2) the degree to which that employee cooperated with or contributed to the efforts of other employees, either within the Department or other Federal, State, or local agencies, in counternarcotics enforcement.

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term 'National Drug Control Program Agency' means—

"(A) a National Drug Control Program Agency, as defined in section 702(7) of the Office of National Drug Control Policy Reauthorization Act of 1998 (as last in effect); and

"(B) any subdivision of the Department that has a significant counternarcotics responsibility, as determined by—

"(i) the counternarcotics officer, appointed under section 878; or

"(ii) if applicable, the counternarcotics officer's successor in function (as determined by the Secretary); and

"(2) the term 'performance appraisal system' means a system under which periodic appraisals of job performance of employees are made, whether under chapter 43 of title 5, United States Code, or otherwise.".

(b) CLERICAL AMENDMENT.—The table of contents for the Homeland Security Act of 2002 is amended by inserting after the item relating to section 842 the following:

"Sec. 843. Use of counternarcotics enforcement activities in certain employee performance appraisals.".

SEC. 5027. SENSE OF THE HOUSE OF REPRESENTATIVES ON ADDRESSING HOMELAND SECURITY FOR THE AMERICAN PEOPLE.

(a) FINDINGS.—The House of Representatives finds that—

(1) the House of Representatives created a Select Committee on Homeland Security at the start of the 108th Congress to provide for vigorous congressional oversight for the implementation and operation of the Department of Homeland Security;

(2) the House of Representatives also charged the Select Committee on Homeland Security, including its Subcommittee on Rules, with undertaking a thorough and complete study of the operation and implementation of the rules of the House, including the rule governing committee jurisdiction, with respect to the issue of homeland security and to make their recommendations to the Committee on Rules;

(3) on February 11, 2003, the Committee on Appropriations of the House of Representatives created a new Subcommittee on Homeland Security with jurisdiction over the Transportation Security Administration, the Coast Guard, and other entities within the Department of Homeland Security to help address the integration of the Department of Homeland Security's 22 legacy agencies; and

(4) during the 108th Congress, the House of Representatives has taken several steps to help ensure its continuity in the event of a terrorist attack, including—

(A) adopting H.R. 2844, the Continuity of Representation Act, a bill to require States to hold expedited special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker in extraordinary circumstances;

(B) granting authority for joint-leadership recalls from a period of adjournment to an alternate place;

(C) allowing for anticipatory consent with the Senate to assemble in an alternate place;

(D) establishing the requirement that the Speaker submit to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker (including physical inability of the Speaker to discharge his duties) until the election of a Speaker or a Speaker pro tempore, exercising such authorities of the Speaker as may be necessary and appropriate to that end;

(E) granting authority for the Speaker to declare an emergency recess of the House subject to the call of the Chair when notified of an imminent threat to the safety of the House;

(F) granting authority for the Speaker, during any recess or adjournment of not more than three days, in consultation with the Minority Leader, to postpone the time for reconvening or to reconvene before the time previously appointed solely to declare the House in recess, in each case within the constitutional three-day limit;

(G) establishing the authority for the Speaker to convene the House in an alternate place within the seat of Government; and

(H) codifying the long-standing practice that the death, resignation, expulsion, disqualification, or removal of a Member results in an adjustment of the quorum of the House, which the Speaker shall announce to the House and which shall not be subject to appeal.

(b) SENSE OF THE HOUSE.—It is the sense of the House of Representatives that the Committee on Rules should act upon the recommendations provided by the Select Committee on Homeland Security, and other committees of existing jurisdiction, regarding the jurisdiction over proposed legislation, messages, petitions, memorials and other matters relating to homeland security prior to or at the start of the 109th Congress.

Subtitle D—Improvements to Information Security

SEC. 5031. AMENDMENTS TO CLINGER-COHEN PROVISIONS TO ENHANCE AGENCY PLANNING FOR INFORMATION SECURITY NEEDS.

Chapter 113 of title 40, United States Code, is amended—

(1) in section 11302(b), by inserting "security," after "use,";

(2) in section 11302(c), by inserting ", including information security risks," after "risks" both places it appears;

(3) in section 11312(b)(1), by striking "information technology investments" and inserting "investments in information technology (including information security needs)"; and

(4) in section 11315(b)(2), by inserting ", secure," after "sound".

Subtitle E—Personnel Management Improvements

CHAPTER 1—APPOINTMENTS PROCESS REFORM

SEC. 5041. APPOINTMENTS TO NATIONAL SECURITY POSITIONS.

(a) DEFINITION OF NATIONAL SECURITY POSITION.—For purposes of this section, the term "national security position" shall include—

(1) those positions that involve activities of the United States Government that are concerned with the protection of the Nation from foreign aggression, terrorism, or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of military strength of the United States and protection of the homeland; and

(2) positions that require regular use of, or access to, classified information.

(b) PUBLICATION IN THE FEDERAL REGISTER.—Not later than 60 days after the effective date of this section, the Director of the Office of Personnel Management shall publish in the Federal Register a list of offices that constitute national security positions under section (a) for which Senate confirmation is required by law, and the Director shall revise such list from time to time as appropriate.

(c) PRESIDENTIAL APPOINTMENTS.—(1) With respect to appointment of individuals to offices identified under section (b) and listed in sections 5315 or 5316 of title 5, United States Code, which shall arise after the publication of the list required by section (b), and notwithstanding any other provision of law, the advice and consent of the Senate shall not be required, but rather such appointment shall be made by the President alone.

(2) With respect to appointment of individuals to offices identified under section (b) and listed in sections 5313 or 5314 of title 5, United States Code, which shall arise after the publication of the list required by section (b), and notwithstanding any other provision of law, the advice and consent of the Senate shall be required, except that if 30 legislative days shall have expired from the date on which a nomination is submitted to the Senate without a confirmation vote occurring in the Senate, such appointment shall be made by the President alone.

(3) For the purposes of this subsection, the term "legislative day" means a day on which the Senate is in session.

SEC. 5042. PRESIDENTIAL INAUGURAL TRANSITIONS.

Subsections (a) and (b) of section 3349a of title 5, United States Code, are amended to read as follows:

"(a) As used in this section—

"(1) the term 'inauguration day' means the date on which any person swears or affirms the oath of office as President; and

"(2) the term 'specified national security position' shall mean not more than 20 positions requiring Senate confirmation, not to include more than 3 heads of Executive Departments, which are designated by the President on or after an inauguration day as positions for which the duties involve substantial responsibility for national security.

"(b) With respect to any vacancy that exists during the 60-day period beginning on an inauguration day, except where the person swearing or affirming the oath of office was the President on the date preceding the date of swearing or affirming such oath of office, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

"(1) 90 days after such transitional inauguration day; or

"(2) 90 days after the date on which the vacancy occurs.

"(c) With respect to any vacancy in any specified national security position that exists during the 60-day period beginning on an inauguration day, the requirements of subparagraphs (A) and (B) of section 3345(a)(3) shall not apply.".

SEC. 5043. PUBLIC FINANCIAL DISCLOSURE FOR THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—The Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by inserting before title IV the following:

"TITLE III—INTELLIGENCE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

"SEC. 301. PERSONS REQUIRED TO FILE.

"(a) Within 30 days of assuming the position of an officer or employee described in subsection (e), an individual shall file a report containing the information described in section 302(b) unless the individual has left another position described in subsection (e) within 30 days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

"(b)(1) Within 5 days of the transmittal by the President to the Senate of the nomination of an individual to a position in the executive branch, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 302(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 302(a)(1)(A) with respect to income and honoraria received as of the date which occurs 5 days before the date of such hearing. Nothing in this Act shall prevent any congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

"(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

"(c) Any individual who is an officer or employee described in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of 60 days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 302(a).

"(d) Any individual who occupies a position described in subsection (e) shall, on or before the 30th day after termination of employment in such position, file a report containing the information described in section 302(a) covering the preceding calendar year if the report required by subsection (c) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in or takes the oath of office for another position described in subsection (e) or section 101(f).

"(e) The officers and employees referred to in subsections (a), (c), and (d) are those employed in or under—

"(1) the Office of the National Intelligence Director; or

"(2) an element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

"(f)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Office of Government Ethics, but the total of such extensions shall not exceed 90 days.

"(2)(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, the date for the filing of any report shall be extended so that the date is 180 days after the later of—

"(i) the last day of the individual's service in such area during such designated period; or

"(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

"(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

"(g) The Director of the Office of Government Ethics may grant a publicly available request for a waiver of any reporting requirement under this title with respect to an individual if the Director determines that—

"(1) such individual is not a full-time employee of the Government;

"(2) such individual is able to provide special services needed by the Government;

"(3) it is unlikely that such individual's outside employment or financial interests will create a conflict of interest; and

"(4) public financial disclosure by such individual is not necessary in the circumstances.

"(h)(1) The Director of the Office of Government Ethics may establish procedures under which an incoming individual can take actions to avoid conflicts of interest while in office if the individual has holdings or other financial interests that raise conflict concerns.

"(2) The actions referenced in paragraph (1) may include, but are not limited to, signed agreements with the individual's employing agency, the establishment of blind trusts, or requirements for divesting interests or holdings while in office.

"SEC. 302. CONTENTS OF REPORTS.

"(a) Each report filed pursuant to section 301 (c) and (d) shall include a full and complete statement with respect to the following:

"(1)(A) The source, description, and category of value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), received during the preceding calendar year, aggregating more than $500 in value, except that honoraria received during Government service by an officer or employee shall include, in addition to the source, the exact amount and the date it was received.

"(B) The source and description of investment income which may include but is not limited to dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $500 in amount or value.

"(C) The categories for reporting the amount for income covered in subparagraphs (A) and (B) are—

"(i) greater than $500 but not more than $20,000;

"(ii) greater than $20,000 but not more than $100,000;

"(iii) greater than $100,000 but not more than $1,000,000;

"(iv) greater than $1,000,000 but not more than $2,500,000; and

"(v) greater than $2,500,000.

"(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

"(B) The identity of the source and a brief description (including dates of travel and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater and received during the preceding calendar year.

"(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $5,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposit accounts aggregating $100,000 or less in a financial institution, or any Federal Government securities aggregating $100,000 or less.

"(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $20,000 at any time during the preceding calendar year, excluding—

"(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

"(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $20,000 as of the close of the preceding calendar year need be reported under this paragraph. Notwithstanding the preceding sentence, individuals required to file pursuant to section 301(b) shall also report the aggregate sum of the outstanding balances of all revolving charge accounts as of any date that is within 30 days of the date of filing if the aggregate sum of those balances exceeds $20,000.

"(5) Except as provided in this paragraph, a brief description of any real property, other than property used solely as a personal residence of the reporting individual or his spouse, or stocks, bonds, commodities futures, and other forms of securities, if—

"(A) purchased, sold, or exchanged during the preceding calendar year;

"(B) the value of the transaction exceeded $5,000; and

"(C) the property or security is not already required to be reported as a source of income pursuant to paragraph (1)(B) or as an asset pursuant to paragraph (3).

"(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the 1-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States Government. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

"(B) If any person, other than a person reported as a source of income under paragraph (1)(A) or the United States Government, paid a nonelected reporting individual compensation in excess of $25,000 in the calendar year in which, or the calendar year prior to the calendar year in which, the individual files his first report under this title, the individual shall include in the report—

"(i) the identity of each source of such compensation; and

"(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person or any information which the person for whom the services are provided has a reasonable expectation of privacy, nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

"(7) A description of parties to and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer. The description of any formal agreement for future employment shall include the date on which that agreement was entered into.

"(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust.

"(b)(1) Each report filed pursuant to subsections (a) and (b) of section 301 shall include a full and complete statement with respect to the information required by—

"(A) paragraphs (1) and (6) of subsection (a) for the year of filing and the preceding calendar year,

"(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than 31 days before the filing date, and

"(C) paragraph (7) of subsection (a) as of the filing date but for periods described in such paragraph.

"(2)(A) In lieu of filling out 1 or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the Office of Government Ethics or pursuant to a specific written determination by the Director of the Office of Government Ethics for a reporting individual.

"(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

"(c)(1) In the case of any individual referred to in section 301(c), the Office of Government Ethics may by regulation require a reporting period to include any period in which the individual served as an officer or employee described in section 301(e) and the period would not otherwise be covered by any public report filed pursuant to this title.

"(2) In the case of any individual referred to in section 301(d), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

"(d)(1) The categories for reporting the amount or value of the items covered in subsection (a)(3) are—

"(A) greater than $5,000 but not more than $15,000;

"(B) greater than $15,000 but not more than $100,000;

"(C) greater than $100,000 but not more than $1,000,000;

"(D) greater than $1,000,000 but not more than $2,500,000; and

"(E) greater than $2,500,000.

"(2) For the purposes of subsection (a)(3) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1). If the current value of any other item required to be reported under subsection (a)(3) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

"(3) The categories for reporting the amount or value of the items covered in paragraphs (4) and (8) of subsection (a) are—

"(A) greater than $20,000 but not more than $100,000;

"(B) greater than $100,000 but not more than $500,000;

"(C) greater than $500,000 but not more than $1,000,000; and

"(D) greater than $1,000,000.

"(e)(1) Except as provided in subparagraph (F), each report required by section 301 shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

"(A) The sources of earned income earned by a spouse including honoraria which exceed $500 except that, with respect to earned income if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

"(B) All information required to be reported in subsection (a)(1)(B) with respect to investment income derived by a spouse or dependent child.

"(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

"(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

"(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items which the reporting individual certifies (i) represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) that he neither derives, nor expects to derive, any financial or economic benefit.

"(F) Reports required by subsections (a), (b), and (c) of section 301 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a).

"(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation, or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

"(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

"(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

"(A) any qualified blind trust (as defined in paragraph (3));

"(B) a trust—

"(i) which was not created directly by such individual, his spouse, or any dependent child, and

"(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge; or

"(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the entity under subsection (a)(1)(B).

"(3) For purposes of this subsection, the term 'qualified blind trust' includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

"(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

"(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party;

"(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

"(III) is not a relative of any interested party.

"(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

"(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

"(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

"(III) is not a relative of any interested party.

"(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the Office of Government Ethics.

"(C) The trust instrument which establishes the trust provides that—

"(i) except to the extent provided in subparagraph (B), the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

"(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

"(iii) the trustee shall promptly notify the reporting individual and the Office of Government Ethics when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

"(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

"(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

"(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

"(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

"(D) The proposed trust instrument and the proposed trustee is approved by the Office of Government Ethics.

"(E) For purposes of this subsection, 'interested party' means a reporting individual, his spouse, and any minor or dependent child; 'broker' has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and 'investment adviser' includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

"(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

"(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the Office of Government Ethics finds that—

"(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

"(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

"(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraph (3)(C) (iii) and (iv), from making public or informing any interested party of the sale of any securities;

"(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v), to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

"(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

"(ii) In any instance covered by subparagraph (B) in which the reporting individual is an individual whose nomination is being considered by a congressional committee, the reporting individual shall inform the congressional committee considering his nomination before or during the period of such individual's confirmation hearing of his intention to comply with this paragraph.

"(5)(A) The reporting individual shall, within 30 days after a qualified blind trust is approved by the Office of Government Ethics, file with such office a copy of—

"(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

"(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7).

"(B) The reporting individual shall, within 30 days of transferring an asset (other than cash) to a previously established qualified blind trust, notify the Office of Government Ethics of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

"(C) Within 30 days of the dissolution of a qualified blind trust, a reporting individual shall notify the Office of Government Ethics of such dissolution.

"(D) Documents filed under subparagraphs (A), (B), and (C) and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 305 and the provisions of that section shall apply with respect to such documents and lists.

"(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the Office of Government Ethics within 5 days of the date of the communication.

"(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently, (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3); (ii) acquire any holding the

ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) or the trust agreement; or (iv) fail to file any document required by this subsection.

"(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) or (ii) fail to file any document required by this subsection.

"(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B). The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

"(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B). The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

"(7) Any trust may be considered to be a qualified blind trust if—

"(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

"(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the Office of Government Ethics, including the category of value of each asset as determined under subsection (d), are filed with such office and made available to the public as provided under paragraph (5)(D); and

"(C) the Director of the Office of Government Ethics determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

"(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

"(A)(i) the fund is publicly traded; or

"(ii) the assets of the fund are widely diversified; and

"(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

"(9)(A)(i) A reporting individual described in subsection (a) or (b) of section 301 shall not be required to report the holdings or sources of income of any trust or investment fund where—

"(I) reporting would result in the disclosure of assets or sources of income of another person whose interests are not required to be reported by the reporting individual under this title;

"(II) the disclosure of such assets and sources of income is prohibited by contract or the assets and sources of income are not otherwise publicly available; and

"(III) the reporting individual has executed a written ethics agreement which contains a general description of the trust or investment fund and a commitment to divest the interest in the trust or investment fund not later than 90 days after the date of the agreement.

"(ii) An agreement described under clause (i)(III) shall be attached to the public financial disclosure which would otherwise include a listing of the holdings or sources of income from this trust or investment fund.

"(B)(i) The provisions of subparagraph (A) shall apply to an individual described in subsection (c) or (d) of section 301 if—

"(I) the interest in the trust or investment fund is acquired involuntarily during the period to be covered by the report, such as through marriage or inheritance, and

"(II) for an individual described in subsection (c), the individual executes a written ethics agreement containing a commitment to divest the interest no later than 90 days after the date on which the report is due.

"(ii) An agreement described under clause (i)(II) shall be attached to the public financial disclosure which would otherwise include a listing of the holdings or sources of income from this trust or investment fund.

"(iii) Failure to divest within the time specified or after an extension granted by the Director of the Office of Government Ethics for good cause shown shall result in an immediate requirement to report as specified in paragraph (1).

"(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

"(h) A report filed pursuant to subsection (a), (c), or (d) of section 301 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

"(i) A reporting individual shall not be required under this title to report—

"(1) financial interests in or income derived from—

"(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

"(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

"(2) benefits received under the Social Security Act (42 U.S.C. 301 et seq.).

"(j)(1) Every month, each designated agency ethics officer shall submit to the Office of Government Ethics notification of any waiver of criminal conflict of interest laws granted to any individual in the preceding month with respect to a filing under this title that is not confidential.

"(2) Every month, the Office of Government Ethics shall make publicly available on the Internet—

"(A) all notifications of waivers submitted under paragraph (1) in the preceding month; and

"(B) notification of all waivers granted by the Office of Government Ethics in the preceding month.

"(k) A full copy of any waiver of criminal conflict of interest laws granted shall be included with any filing required under this title with respect to the year in which the waiver is granted.

"(l) The Office of Government Ethics shall provide upon request any waiver on file for which notice has been published.

"SEC. 303. FILING OF REPORTS.

"(a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 301(d), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

"(b) Reports required to be filed under this title by the Director of the Office of Government Ethics shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

"(c) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

"(d) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title.

"SEC. 304. FAILURE TO FILE OR FILING FALSE REPORTS.

"(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 302. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

"(b) The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual which such official has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

"(c) The President, the Vice President, the Secretary concerned, or the head of each agency may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

"(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

"(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

"(B) if a filing extension is granted to such individual under section 301(g), the last day of the filing extension period, shall, at the direction of and pursuant to regulations issued by the Office of Government Ethics, pay a filing fee of $500. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the Office of Government Ethics to other agencies in the executive branch.

"(2) The Office of Government Ethics may waive the filing fee under this subsection for good cause shown.

"SEC. 305. CUSTODY OF AND PUBLIC ACCESS TO REPORTS.

"Any report filed with or transmitted to an agency or the Office of Government Ethics pursuant to this title shall be retained by such agency or Office, as the case may be, for a period of 6 years after receipt of the report. After such 6-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 301(b) and was not subsequently confirmed by the Senate, such reports shall be destroyed 1 year after the individual is no longer under consideration by the Senate, unless needed in an ongoing investigation.

"SEC. 306. REVIEW OF REPORTS.

"(a) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within 60 days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within 60 days after the date of transmittal.

"(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, or the designated agency ethics official, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

"(2) If the Director of the Office of Government Ethics, the Secretary concerned, or the designated agency ethics official after reviewing any report under subsection (a)—

"(A) believes additional information is required to be submitted to complete the form or to perform a conflict of interest analysis, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

"(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

"(3) If the Director of the Office of Government Ethics, the Secretary concerned, or the designated agency ethics official reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

"(A) divestiture,

"(B) restitution,

"(C) the establishment of a blind trust,

"(D) request for an exemption under section 208(b) of title 18, United States Code, or

"(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the Office of Government Ethics may prescribe.

"(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

"(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency for appropriate action.

"(6) The Office of Government Ethics may render advisory opinions interpreting this title. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

"SEC. 307. CONFIDENTIAL REPORTS AND OTHER ADDITIONAL REQUIREMENTS.

"(a)(1) The Office of Government Ethics may require officers and employees of the executive branch (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as it may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency listed in section 301(e) shall be set forth in rules or regulations prescribed by the Office of Government Ethics, and may be less extensive than otherwise required by this title, or more extensive when determined by the Office of Government Ethics to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 301 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Section 305 shall not apply with respect to any such report.

"(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

"(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

"(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

"(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

"SEC. 308. AUTHORITY OF COMPTROLLER GENERAL.

"The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

"SEC. 309. DEFINITIONS.

"For the purposes of this title—

"(1) the term 'dependent child' means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

"(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

"(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152);

"(2) the term 'designated agency ethics official' means an officer or employee who is designated to administer the provisions of this title within an agency;

"(3) the term 'executive branch' includes—

"(A) each Executive agency (as defined in section 105 of title 5, United States Code), other than the General Accounting Office; and

"(B) any other entity or administrative unit in the executive branch;

"(4) the term 'gift' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

"(A) bequests and other forms of inheritance;

"(B) suitable mementos of a function honoring the reporting individual;

"(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

"(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

"(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

"(F) items that are accepted pursuant to or are required to be reported by the reporting individual under section 7342 of title 5, United States Code.

"(5) the term 'honorarium' means a payment of money or anything of value for an appearance, speech, or article;

"(6) the term 'income' means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; prizes and awards; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

"(7) the term 'personal hospitality of any individual' means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

"(8) the term 'reimbursement' means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

"(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

"(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

"(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

"(9) the term 'relative' means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual;

"(10) the term 'Secretary concerned' has the meaning set forth in section 101(a)(9) of title 10, United States Code; and

"(11) the term 'value' means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

"SEC. 310. NOTICE OF ACTIONS TAKEN TO COMPLY WITH ETHICS AGREEMENTS.

"(a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, or a Senate confirmation committee, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, or the appropriate committee of the Senate, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than 3 months after the date of the agreement, if no date for action is so specified. If all actions agreed to have not been completed by the date of this notification, such notification shall continue on a monthly basis thereafter until the individual has met the terms of the agreement.

"(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the Office of Government Ethics within the time prescribed in the penultimate sentence of subsection (a).

"SEC. 311. ADMINISTRATION OF PROVISIONS.

"The Office of Government Ethics shall issue regulations, develop forms, and provide such guidance as is necessary to implement and interpret this title.".

(b) EXEMPTION FROM PUBLIC ACCESS TO FINANCIAL DISCLOSURES.—Section 105(a)(1) of such Act is amended by inserting "the Office of the National Intelligence Director," before "the Central Intelligence Agency".

(c) CONFORMING AMENDMENT.—Section 101(f) of such Act is amended—

(1) in paragraph (12), by striking the period at the end and inserting a semicolon; and

(2) by adding at the end the following:

"but do not include any officer or employee of any department or agency listed in section 301(e).".

SEC. 5044. REDUCTION OF POSITIONS REQUIRING APPOINTMENT WITH SENATE CONFIRMATION.

(a) DEFINITION.—In this section, the term "agency" means an Executive agency, as defined under section 105 of title 5, United States Code.

(b) REDUCTION PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the head of each agency shall submit a Presidential appointment reduction plan to—

(A) the President;

(B) the Committee on Governmental Affairs of the Senate; and

(C) the Committee on Government Reform of the House of Representatives.

(2) CONTENT.—The plan under this subsection shall provide for the reduction of—

(A) the number of positions within that agency that require an appointment by the President, by and with the advice and consent of the Senate; and

(B) the number of levels of such positions within that agency.

SEC. 5045. EFFECTIVE DATES.

(a) SECTION 5043.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by section 5043 shall take effect on January 1 of the year following the year in which occurs the date of enactment of this Act.

(2) LATER DATE.—If this Act is enacted on or after July 1 of a year, the amendments made by section 301 shall take effect on July 1 of the following year.

(b) SECTION 5044.—Section 5044 shall take effect on the date of enactment of this Act.

CHAPTER 2—FEDERAL BUREAU OF INVESTIGATION REVITALIZATION

SEC. 5051. MANDATORY SEPARATION AGE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8335(b) of title 5, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8425(b) of title 5, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.".

SEC. 5052. RETENTION AND RELOCATION BONUSES.

(a) IN GENERAL.—Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end the following:

"§ 5759. Retention and relocation bonuses for the Federal Bureau of Investigation

"(a) AUTHORITY.—The Director of the Federal Bureau of Investigation, after consultation with the Director of the Office of Personnel Management, may pay, on a case-by-case basis, a bonus under this section to an employee of the Bureau if—

"(1)(A) the unusually high or unique qualifications of the employee or a special need of the Bureau for the employee's services makes it essential to retain the employee; and

"(B) the Director of the Federal Bureau of Investigation determines that, in the absence of such a bonus, the employee would be likely to leave—

"(i) the Federal service; or

"(ii) for a different position in the Federal service; or

"(2) the individual is transferred to a different geographic area with a higher cost of living (as determined by the Director of the Federal Bureau of Investigation).

"(b) SERVICE AGREEMENT.—Payment of a bonus under this section is contingent upon the employee entering into a written service agreement with the Bureau to complete a period of service with the Bureau. Such agreement shall include—

"(1) the period of service the individual shall be required to complete in return for the bonus; and

"(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

"(c) LIMITATION ON AUTHORITY.—A bonus paid under this section may not exceed 50 percent of the employee's basic pay.

"(d) IMPACT ON BASIC PAY.—A retention bonus is not part of the basic pay of an employee for any purpose.

"(e) TERMINATION OF AUTHORITY.—The authority to grant bonuses under this section shall cease to be available after December 31, 2009.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 57 of title 5, United States Code, is amended by adding at the end the following:

"5759. Retention and relocation bonuses for the Federal Bureau of Investigation.".

SEC. 5053. FEDERAL BUREAU OF INVESTIGATION RESERVE SERVICE.

(a) IN GENERAL.—Chapter 35 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

"§ 3598. Federal Bureau of Investigation Reserve Service

"(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the 'FBI Reserve Service') for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

"(b) MEMBERSHIP.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

"(c) ANNUITANTS.—If an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

"(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

"(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

"(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII--RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

"3598. Federal Bureau of Investigation Reserve Service.".

SEC. 5054. CRITICAL POSITIONS IN THE FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE DIRECTORATE.

Section 5377(a)(2) of title 5, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following:

"(G) a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).".

CHAPTER 3—MANAGEMENT AUTHORITY

SEC. 5061. MANAGEMENT AUTHORITY.

(a) MANAGEMENT AUTHORITY.—Section 7103(b)(1)(A) of title 5, United States Code, is amended by adding "homeland security," after "investigative,".

(b) EXCLUSIONARY AUTHORITY.—Section 842 of the Homeland Security Act (Public Law 107–296; 6 U.S.C. 412) is repealed.

Subtitle F—Security Clearance Modernization

SEC. 5071. DEFINITIONS.

In this subtitle:

(1) The term "Director" means the National Intelligence Director.

(2) The term "agency" means—

(A) an executive agency, as defined in section 105 of title 5, United States Code;

(B) a military department, as defined in section 102 of title 5, United States Code; and

(C) elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "authorized investigative agency" means an agency authorized by law, regulation or direction of the Director to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(4) The term "authorized adjudicative agency" means an agency authorized by law, regulation or direction of the Director to determine eligibility for access to classified information in accordance with Executive Order 12968.

(5) The term "highly sensitive program" means—

(A) a government program designated as a Special Access Program (as defined by section 4.1(h) of Executive Order 12958); and

(B) a government program that applies restrictions required for—

(i) Restricted Data (as defined by section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)); or

(ii) other information commonly referred to as "Sensitive Compartmented Information".

(6) The term "current investigation file" means, with respect to a security clearance, a file on an investigation or adjudication that has been conducted during—

(A) the 5-year period beginning on the date the security clearance was granted, in the case of a Top Secret Clearance, or the date access was granted to a highly sensitive program;

(B) the 10-year period beginning on the date the security clearance was granted in the case of a Secret Clearance; and

(C) the 15-year period beginning on the date the security clearance was granted in the case of a Confidential Clearance.

(7) The term "personnel security investigation" means any investigation required for the purpose of determining the eligibility of any military, civilian, or government contractor personnel to access classified information.

(8) The term "periodic reinvestigations" means—

(A) investigations conducted for the purpose of updating a previously completed background investigation—

(i) every five years in the case of a Top Secret Clearance or access to a highly sensitive program;

(ii) every 10 years in the case of a Secret Clearance; and

(iii) every 15 years in the case of a Confidential Clearance;

(B) on-going investigations to identify personnel security risks as they develop, pursuant to section 105(c).

(9) The term "appropriate committees of Congress" means—

(A) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Judiciary, and Government Reform of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committees on Armed Services, Judiciary, and Governmental Affairs of the Senate.

SEC. 5072. SECURITY CLEARANCE AND INVESTIGATIVE PROGRAMS OVERSIGHT AND ADMINISTRATION.

The Deputy National Intelligence Director for Community Management and Resources shall have responsibility for the following:

(1) Directing day-to-day oversight of investigations and adjudications for personnel security clearances to highly sensitive programs throughout the Federal Government.

(2) Developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of security clearances and determinations for access to highly sensitive programs, including the standardization of security questionnaires, financial disclosure requirements for security clearance applicants, and polygraph policies and procedures.

(3) Serving as the final authority to designate an authorized investigative agency or authorized adjudicative agency pursuant to section 5074(d).

(4) Ensuring reciprocal recognition of access to classified information among agencies, including acting as the final authority to arbitrate and resolve disputes involving the reciprocity of security clearances and access to highly sensitive programs.

(5) Ensuring, to the maximum extent practicable, that sufficient resources are available in each agency to achieve clearance and investigative program goals.

(6) Reviewing and coordinating the development of tools and techniques for enhancing the conduct of investigations and granting of clearances.

SEC. 5073. RECIPROCITY OF SECURITY CLEARANCE AND ACCESS DETERMINATIONS.

(a) REQUIREMENT FOR RECIPROCITY.—(1) All security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudicative agency shall be accepted by all agencies.

(2) All security clearance background investigations initiated by an authorized investigative agency shall be transferable to any other authorized investigative agency.

(b) PROHIBITION ON ESTABLISHING ADDITIONAL REQUIREMENTS.—(1) An authorized investigative agency or authorized adjudicative agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination) that exceed requirements specified in Executive Orders establishing security requirements for access to classified information.

(2) Notwithstanding the paragraph (1), the Director may establish additional requirements as needed for national security purposes.

(c) PROHIBITION ON DUPLICATIVE INVESTIGATIONS.—An authorized investigative agency or authorized adjudicative agency may not conduct an investigation for purposes of determining whether to grant a security clearance to an individual where a current investigation or clearance of equal level already exists or has been granted by another authorized adjudicative agency.

SEC. 5074. ESTABLISHMENT OF NATIONAL DATABASE .

(a) ESTABLISHMENT.—Not later than 12 months after the date of the enactment of this Act, the Director of the Office of Personnel Management, in cooperation with the Director, shall establish, and begin operating and maintaining, an integrated, secure, national database into which appropriate data relevant to the granting, denial, or revocation of a security clearance or access pertaining to military, civilian, or government contractor personnel shall be entered from all authorized investigative and adjudicative agencies.

(b) INTEGRATION.—The national database established under subsection (a) shall function to integrate information from existing Federal clearance tracking systems from other authorized investigative and adjudicative agencies into a single consolidated database.

(c) REQUIREMENT TO CHECK DATABASE.—Each authorized investigative or adjudicative agency shall check the national database established under subsection (a) to determine whether an individual the agency has identified as requiring a security clearance has already been granted or denied a security clearance, or has had a security clearance revoked, by any other authorized investigative or adjudicative agency.

(d) CERTIFICATION OF AUTHORIZED INVESTIGATIVE AGENCIES OR AUTHORIZED ADJUDICATIVE AGENCIES.—The Director shall evaluate the extent to which an agency is submitting information to, and requesting information from, the national database established under subsection (a) as part of a determination of whether to certify the agency as an authorized investigative agency or authorized adjudicative agency.

(e) EXCLUSION OF CERTAIN INTELLIGENCE OPERATIVES.—The Director may authorize an agency to withhold information about certain individuals from the database established under subsection (a) if the Director determines it is necessary for national security purposes.

(f) COMPLIANCE.—The Director shall establish a review procedure by which agencies can seek review of actions required under section 5073.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year for the implementation, maintenance and operation of the database established in subsection (a).

SEC. 5075. USE OF AVAILABLE TECHNOLOGY IN CLEARANCE INVESTIGATIONS.

(a) INVESTIGATIONS.—Not later than 12 months after the date of the enactment of this Act, each authorized investigative agency that conducts personnel security clearance investigations shall use, to the maximum extent practicable, available information technology and databases to expedite investigative processes and to verify standard information submitted as part of an application for a security clearance.

(b) INTERIM CLEARANCE.—If the application of an applicant for an interim clearance has been processed using the technology under subsection (a), the interim clearances for the applicant at the secret, top secret, and special access program levels may be granted before the completion of the appropriate investigation. Any request to process an interim clearance shall be given priority, and the authority granting the interim clearance shall ensure that final adjudication on the application is made within 90 days after the initial clearance is granted.

(c) ON-GOING MONITORING OF INDIVIDUALS WITH SECURITY CLEARANCES.—(1) Authorized investigative agencies and authorized adjudicative agencies shall establish procedures for the regular, ongoing verification of personnel with security clearances in effect for continued access to classified information. Such procedures shall include the use of available technology to detect, on a regularly recurring basis, any issues of concern that may arise involving such personnel and such access.

(2) Such regularly recurring verification may be used as a basis for terminating a security clearance or access and shall be used in periodic reinvestigations to address emerging threats and adverse events associated with individuals with security clearances in effect to the maximum extent practicable.

(3) If the Director certifies that the national security of the United States is not harmed by the discontinuation of periodic reinvestigations, the regularly recurring verification under this section may replace periodic reinvestigations.

SEC. 5076. REDUCTION IN LENGTH OF PERSONNEL SECURITY CLEARANCE PROCESS.

(a) 60-Day PERIOD FOR DETERMINATION ON CLEARANCES.—Each authorized adjudicative agency shall make a determination on an application for a personnel security clearance within 60 days after the date of receipt of the completed application for a security clearance by an authorized investigative agency. The 60-day period shall include—

(1) a period of not longer than 40 days to complete the investigative phase of the clearance review; and

(2) a period of not longer than 20 days to complete the adjudicative phase of the clearance review.

(b) EFFECTIVE DATE AND PHASE-IN.—

(1) EFFECTIVE DATE.—Subsection (a) shall take effect 5 years after the date of the enactment of this Act.

(2) PHASE-IN.—During the period beginning on a date not later than 2 years after the date after the enactment of this Act and ending on the date on which subsection (a) takes effect as specified in paragraph (1), each authorized adjudicative agency shall make a determination on an application for a personnel security clearance pursuant to this title within 120 days after the date of receipt of the application for a security clearance by an authorized investigative agency. The 120-day period shall include—

(A) a period of not longer than 90 days to complete the investigative phase of the clearance review; and

(B) a period of not longer than 30 days to complete the adjudicative phase of the clearance review.

SEC. 5077. SECURITY CLEARANCES FOR PRESIDENTIAL TRANSITION.

(a) CANDIDATES FOR NATIONAL SECURITY POSITIONS.—(1) The President-elect shall submit to the Director the names of candidates for high-level national security positions, for positions at the level of under secretary of executive departments and above, as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

(2) The Director shall be responsible for the expeditious completion of the background investigations necessary to provide appropriate security clearances to the individuals who are candidates described under paragraph (1) before the date of the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.

(b) SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS.—(1) In this section, the term "major party" has the meaning provided under section 9002(6) of the Internal Revenue Code of 1986.

(2) Each major party candidate for President, except a candidate who is the incumbent President, shall submit, before the date of the general presidential election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect's transition team.

(3) Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general presidential election.

SEC. 5078. REPORTS.

Not later than February 15, 2006, and annually thereafter through 2016, the Director shall submit to the appropriate committees of Congress a report on the progress made during the preceding year toward meeting the requirements specified in this Act. The report shall include—

(1) the periods of time required by the authorized investigative agencies and authorized adjudicative agencies during the year covered by the report for conducting investigations, adjudicating cases, and granting clearances, from date of submission to ultimate disposition and notification to the subject and the subject's employer;

(2) a discussion of any impediments to the smooth and timely functioning of the implementation of this title; and

(3) such other information or recommendations as the Deputy Director deems appropriate.

Subtitle G—Emergency Financial Preparedness

SEC. 5081. DELEGATION AUTHORITY OF THE SECRETARY OF THE TREASURY.

Subsection (d) of section 306 of title 31, United States Code, is amended by inserting "or employee" after "another officer".

SEC. 5082. EXTENSION OF EMERGENCY ORDER AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION.

(a) EXTENSION OF AUTHORITY.—Paragraph (2) of section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(k)(2)) is amended to read as follows:

"(2) EMERGENCY ORDERS.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

"(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

"(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

"(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of (I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets, or (II) the transmission or processing of securities transactions (other than transactions in exempted securities).

"(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended. Except

as provided in subparagraph (C), the Commission's action may not continue in effect for more than 30 business days, including extensions.

"(C) An order of the Commission under this paragraph (2) may be extended to continue in effect for more than 30 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 30 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph (2) continue in effect for more than 90 calendar days.

"(D) If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

"(E) Notwithstanding the exclusion of exempted securities (and markets therein) from the Commission's authority under subparagraph (A), the Commission may use such authority to take action to alter, supplement, suspend, or impose requirements or restrictions with respect to clearing agencies for transactions in such exempted securities. In taking any action under this subparagraph, the Commission shall consult with and consider the views of the Secretary of the Treasury.".

(b) CONSULTATION; DEFINITION OF EMERGENCY.—Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(k)) is further amended by striking paragraph (6) and inserting the following:

"(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

"(7) DEFINITIONS.—

"(A) EMERGENCY.—For purposes of this subsection, the term 'emergency' means—

"(i) a major market disturbance characterized by or constituting—

"(I) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

"(II) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

"(ii) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

"(I) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

"(II) the transmission or processing of securities transactions.

"(B) SECURITIES LAWS.—Notwithstanding section 3(a)(47), for purposes of this subsection, the term 'securities laws' does not include the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.).".

SEC. 5083. PARALLEL AUTHORITY OF THE SECRETARY OF THE TREASURY WITH RESPECT TO GOVERNMENT SECURITIES.

Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–5) is amended by adding at the end the following new subsection:

"(h) EMERGENCY AUTHORITY.—The Secretary may by order take any action with respect to a matter or action subject to regulation by the Secretary under this section, or the rules of the Secretary thereunder, involving a government security or a market therein (or significant portion or segment of that market), that the Commission may take under section 12(k)(2) of this title with respect to transactions in securities (other than exempted securities) or a market therein (or significant portion or segment of that market).".

Subtitle H—Other Matters

Chapter 1—Privacy Matters

SEC. 5091. REQUIREMENT THAT AGENCY RULEMAKING TAKE INTO CONSIDERATION IMPACTS ON INDIVIDUAL PRIVACY.

(a) SHORT TITLE.—This section may be cited as the "Federal Agency Protection of Privacy Act of 2004".

(b) IN GENERAL.—Title 5, United States Code, is amended by adding after section 553 the following new section:

"§ 553a. Privacy impact assessment in rulemaking

"(a) INITIAL PRIVACY IMPACT ASSESSMENT.—

"(1) IN GENERAL.—Whenever an agency is required by section 553 of this title, or any other law, to publish a general notice of proposed rulemaking for a proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, and such rule or proposed rulemaking pertains to the collection, maintenance, use, or disclosure of personally identifiable information from 10 or more individuals, other than agencies, instrumentalities, or employees of the Federal government, the agency shall prepare and make available for public comment an initial privacy impact assessment that describes the impact of the proposed rule on the privacy of individuals. Such assessment or a summary thereof shall be signed by the senior agency official with primary responsibility for privacy policy and be published in the Federal Register at the time of the publication of a general notice of proposed rulemaking for the rule.

"(2) CONTENTS.—Each initial privacy impact assessment required under this subsection shall contain the following:

"(A) A description and analysis of the extent to which the proposed rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

"(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

"(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

"(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

"(iv) provides security for such information.

"(B) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant privacy impact of the proposed rule on individuals.

"(b) FINAL PRIVACY IMPACT ASSESSMENT.—

"(1) IN GENERAL.—Whenever an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, and such rule or proposed rulemaking pertains to the collection, maintenance, use, or disclosure of personally identifiable information from 10 or more individuals, other than agencies, instrumentalities, or employees of the Federal government, the agency shall prepare a final privacy impact assessment, signed by the senior agency official with primary responsibility for privacy policy.

"(2) CONTENTS.—Each final privacy impact assessment required under this subsection shall contain the following:

"(A) A description and analysis of the extent to which the final rule will impact the privacy interests of individuals, including the extent to which such rule—

"(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

"(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

"(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

"(iv) provides security for such information.

"(B) A summary of any significant issues raised by the public comments in response to the initial privacy impact assessment, a summary of the

analysis of the agency of such issues, and a statement of any changes made in such rule as a result of such issues.

"(C) A description of the steps the agency has taken to minimize the significant privacy impact on individuals consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the privacy interests of individuals was rejected.

"(3) AVAILABILITY TO PUBLIC.—The agency shall make copies of the final privacy impact assessment available to members of the public and shall publish in the Federal Register such assessment or a summary thereof.

"(c) WAIVERS.—

"(1) EMERGENCIES.—An agency head may waive or delay the completion of some or all of the requirements of subsections (a) and (b) to the same extent as the agency head may, under section 608, waive or delay the completion of some or all of the requirements of sections 603 and 604, respectively.

"(2) NATIONAL SECURITY.—An agency head may, for national security reasons, or to protect from disclosure classified information, confidential commercial information, or information the disclosure of which may adversely affect a law enforcement effort, waive or delay the completion of some or all of the following requirements:

"(A) The requirement of subsection (a)(1) to make an assessment available for public comment.

"(B) The requirement of subsection (a)(1) to have an assessment or summary thereof published in the Federal Register.

"(C) The requirements of subsection (b)(3).

"(d) PROCEDURES FOR GATHERING COMMENTS.—When any rule is promulgated which may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that individuals have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals;

"(2) the publication of a general notice of proposed rulemaking in publications of national circulation likely to be obtained by individuals;

"(3) the direct notification of interested individuals;

"(4) the conduct of open conferences or public hearings concerning the rule for individuals, including soliciting and receiving comments over computer networks; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by individuals.

"(e) PERIODIC REVIEW OF RULES.—

"(1) IN GENERAL.—Each agency shall carry out a periodic review of the rules promulgated by the agency that have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals. Under such periodic review, the agency shall determine, for each such rule, whether the rule can be amended or rescinded in a manner that minimizes any such impact while remaining in accordance with applicable statutes. For each such determination, the agency shall consider the following factors:

"(A) The continued need for the rule.

"(B) The nature of complaints or comments received from the public concerning the rule.

"(C) The complexity of the rule.

"(D) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules.

"(E) The length of time since the rule was last reviewed under this subsection.

"(F) The degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since the rule was last reviewed under this subsection.

"(2) PLAN REQUIRED.—Each agency shall carry out the periodic review required by paragraph (1) in accordance with a plan published by such agency in the Federal Register. Each such plan shall provide for the review under this subsection of each rule promulgated by the agency not later than 10 years after the date on which such rule was published as the final rule and, thereafter, not later than 10 years after the date on which such rule was last reviewed under

this subsection. The agency may amend such plan at any time by publishing the revision in the Federal Register.

"(3) ANNUAL PUBLICATION.—Each year, each agency shall publish in the Federal Register a list of the rules to be reviewed by such agency under this subsection during the following year. The list shall include a brief description of each such rule and the need for and legal basis of such rule and shall invite public comment upon the determination to be made under this subsection with respect to such rule.

"(f) JUDICIAL REVIEW.—

"(1) IN GENERAL.—For any rule subject to this section, an individual who is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

"(2) JURISDICTION.—Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

"(3) LIMITATIONS.—

"(A) An individual may seek such review during the period beginning on the date of final agency action and ending 1 year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of 1 year, such lesser period shall apply to an action for judicial review under this subsection.

"(B) In the case where an agency delays the issuance of a final privacy impact assessment pursuant to subsection (c), an action for judicial review under this section shall be filed not later than—

"(i) 1 year after the date the assessment is made available to the public; or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the assessment is made available to the public.

"(4) RELIEF.—In granting any relief in an action under this subsection, the court shall order the agency to take corrective action consistent with this section and chapter 7, including, but not limited to—

"(A) remanding the rule to the agency; and

"(B) deferring the enforcement of the rule against individuals, unless the court finds that continued enforcement of the rule is in the public interest.

"(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this subsection.

"(6) RECORD OF AGENCY ACTION.—In an action for the judicial review of a rule, the privacy impact assessment for such rule, including an assessment prepared or corrected pursuant to paragraph (4), shall constitute part of the entire record of agency action in connection with such review.

"(7) EXCLUSIVITY.—Compliance or noncompliance by an agency with the provisions of this section shall be subject to judicial review only in accordance with this subsection.

"(8) SAVINGS CLAUSE.—Nothing in this subsection bars judicial review of any other impact statement or similar assessment required by any other law if judicial review of such statement or assessment is otherwise permitted by law.

"(g) DEFINITION.—For purposes of this section, the term 'personally identifiable information' means information that can be used to identify an individual, including such individual's name, address, telephone number, photograph, social security number or other identifying information. It includes information about such individual's medical or financial condition.".

(c) PERIODIC REVIEW TRANSITION PROVISIONS.—

(1) INITIAL PLAN.—For each agency, the plan required by subsection (e) of section 553a of title 5, United States Code (as added by subsection (a)), shall be published not later than 180 days after the date of the enactment of this Act.

(2) In the case of a rule promulgated by an agency before the date of the enactment of this Act, such plan shall provide for the periodic review of such rule before the expiration of the 10-year period beginning on the date of the enactment of this Act. For any such rule, the head of the agency may provide for a 1-year extension of such period if the head of the agency, before the expiration of the period, certifies in a statement published in the Federal Register that re-

viewing such rule before the expiration of the period is not feasible. The head of the agency may provide for additional 1-year extensions of the period pursuant to the preceding sentence, but in no event may the period exceed 15 years.

(d) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B) of title 5, United States Code, is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

"(iii) the agency's actions relevant to section 553a;".

(e) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 5 of title 5, United States Code, is amended by adding after the item relating to section 553 the following new item:

553a. Privacy impact assessment in rulemaking.".

SEC. 5092. CHIEF PRIVACY OFFICERS FOR AGENCIES WITH LAW ENFORCEMENT OR ANTI-TERRORISM FUNCTIONS.

(a) IN GENERAL.—There shall be within each Federal agency with law enforcement or anti-terrorism functions a chief privacy officer, who shall have primary responsibility within that agency for privacy policy. The agency chief privacy officer shall be designated by the head of the agency.

(b) RESPONSIBILITIES.—The responsibilities of each agency chief privacy officer shall include—

(1) ensuring that the use of technologies sustains, and does not erode, privacy protections relating to the use, collection, and disclosure of personally identifiable information;

(2) ensuring that personally identifiable information contained in systems of records is handled in full compliance with fair information practices as set out in section 552a of title 5, United States Code;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the agency on the privacy of personally identifiable information, including the type of personally identifiable information collected and the number of people affected;

(5) preparing and submitting a report to Congress on an annual basis on activities of the agency that affect privacy, including complaints of privacy violations, implementation of section 552a of title 5, United States Code, internal controls, and other relevant matters;

(6) ensuring that the agency protects personally identifiable information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(B) confidentially, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

(C) availability, which means ensuring timely and reliable access to and use of that information; and

(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access; and

(7) advising the head of the agency and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems.

SEC. 5093. DATA-MINING REPORT.

(a) DEFINITIONS.—In this section:

(1) DATA-MINING.—The term "data-mining" means a query or search or other analysis of 1 or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement;

(B) the search does not use a specific individual's personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist or other criminal activity.

(2) DATABASE.—The term "database" does not include telephone directories, information publicly available via the Internet or available by any other means

to any member of the public without payment of a fee, or databases of judicial and administrative opinions.

(b) REPORTS ON DATA-MINING ACTIVITIES.—

(1) REQUIREMENT FOR REPORT.—The head of each department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology shall each submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official.

(2) CONTENT OF REPORT.—A report submitted under paragraph (1) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(A) A thorough description of the data-mining technology and the data that will be used.

(B) A thorough discussion of the plans for the use of such technology and the target dates for the deployment of the data-mining technology.

(C) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(D) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(E) A list and analysis of the laws and regulations that govern the information to be collected, reviewed, gathered, and analyzed with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(F) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology for data-mining in order to—

(i) protect the privacy and due process rights of individuals; and

(ii) ensure that only accurate information is collected and used.

(G) A thorough discussion of the procedures allowing individuals whose personal information will be used in the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology, and, if no such procedures are in place, a thorough explanation as to why not.

(H) Any necessary classified information in an annex that shall be available to the Committee on Governmental Affairs, the Committee on the Judiciary, and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives.

(3) TIME FOR REPORT.—Each report required under paragraph (1) shall be—

(A) submitted not later than 90 days after the date of the enactment of this Act; and

(B) updated once a year and include any new data-mining technologies.

SEC. 5094. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) IN GENERAL.—There is established within the Executive Branch an Independent Privacy and Civil Liberties Oversight Board (referred to in this section as the "Board").

(b) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.

(c) PURPOSE.—The Board shall—

(1) analyze and review actions the Executive Branch takes to protect the Nation from terrorism as such actions pertain to privacy or civil liberties; and

(2) ensure that privacy and civil liberties concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

(d) FUNCTIONS.—

(1) ADVICE AND COUNSEL ON POLICY DEVELOPMENT AND IMPLEMENTATION.—The Board shall—

(A) review the privacy and civil liberties implications of proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under section 892 of the Homeland Security Act;

(B) review the privacy and civil liberties implications of the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under section 892 of the Homeland Security Act;

(C) advise the President and Federal executive departments and agencies to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the executive department or agency has explained—

(i) that the power actually materially enhances security; and

(ii) that there is adequate supervision of the executive's use of the power to ensure protection of privacy and civil liberties.

(2) OVERSIGHT.—The Board shall continually review—

(A) the regulations, policies, and procedures and the implementation of the regulations, policies, procedures, and related laws of Federal executive departments and agencies to ensure that privacy and civil liberties are protected;

(B) the information sharing practices of Federal executive departments and agencies to determine whether they appropriately protect privacy and civil liberties and adhere to the information sharing guidelines promulgated under section 892 of the Homeland Security Act and to other governing laws, regulations, and policies regarding privacy and civil liberties; and

(C) other actions by the Executive Branch related to efforts to protect the Nation from terrorism to determine whether such actions—

(i) appropriately protect privacy and civil liberties; and

(ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.

(3) RELATIONSHIP WITH PRIVACY OFFICERS.—The Board shall—

(A) review and assess reports and other information from privacy officers described in section 5092;

(B) when appropriate, make recommendations to such privacy officers regarding their activities; and

(C) when appropriate, coordinate the activities of such privacy officers on relevant interagency matters.

(4) TESTIMONY.—The Members of the Board shall appear and testify before Congress upon request.

(e) REPORTS.—

(1) IN GENERAL.—The Board shall—

(A) receive and review reports from privacy and civil liberties officers described in section 5092(b)(5); and

(B) periodically submit, not less than semiannually, reports to Congress and the President.

(2) CONTENTS.—Not less than 2 reports submitted each year under paragraph (1)(B) shall include—

(A) a description of the major activities of the Board during the relevant period; and

(B) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

(f) INFORMING THE PUBLIC.—The Board shall hold public hearings, release public reports, and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information, applicable law, and national security.

(g) ACCESS TO INFORMATION.—

(1) AUTHORIZATION.—If determined by the Board to be necessary to carry out its responsibilities under this section, the Board may—

(A) secure directly from any Federal executive department or agency, or any Federal officer or employee, all relevant records, reports, audits, reviews, documents, papers, or recommendations, including classified information consistent with applicable law;

(B) interview, take statements from, or take public testimony from personnel of any Federal executive department or agency or any Federal officer or employee; and

(C) request information or assistance from any State, tribal, or local government.

(2) OBTAINING OFFICIAL INFORMATION.—

(A) REQUIREMENT TO FURNISH.—Except as provided in subparagraph (B), if the Board submits a request to a Federal department or agency for information necessary to enable the Board to carry out this section, the head of such department or agency shall furnish that information to the Board.

(B) EXCEPTION FOR NATIONAL SECURITY.—If the National Intelligence Director, in consultation with the Attorney General, determines that it is necessary to withhold requested information from disclosure to protect the national security interests of the United States, the department or agency head shall not furnish that information to the Board.

(h) MEMBERSHIP.—

(1) MEMBERS.—The Board shall be composed of a chairman and 4 additional members, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) POLITICAL AFFILIATION.—Not more than 3 members of the Board shall be of the same political party.

(3) QUALIFICATIONS.—Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, and relevant experience, and without regard to political affiliation. Members of the Board shall also have extensive experience in the areas of privacy and civil rights and liberties.

(4) INCOMPATIBLE OFFICE.—An individual appointed to the Board may not, while serving on the Board, be an elected official, an officer, or an employee of the Federal Government, other than in the capacity as a member of the Board.–

(5) TERM.—Each member of the Board shall serve a term of six years, except that—

(A) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term;—

(B) upon the expiration of the term of office of a member, the member shall continue to serve until the member's successor has been appointed and qualified, except that no member may serve under this subparagraph—

(i) for more than 60 days when Congress is in session unless a nomination to fill the vacancy shall have been submitted to the Senate; or

(ii) after the adjournment sine die of the session of the Senate in which such nomination is submitted; and

(C) the members initially appointed under this subsection shall serve terms of two, three, four, five, and six years, respectively, from the effective date of this Act, with the term of each such member to be designated by the President.

(i) QUORUM AND MEETINGS.—After its initial meeting, the Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.

(j) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—

(A) CHAIRMAN.—The chairman shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code, for each day during which the chairman is engaged in the actual performance of the duties of the Board.

(B) MEMBERS.—Each member of the Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(2) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for persons employed intermittently by the Government under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(k) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Chairman, in accordance with rules agreed upon by the Board, shall appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the Board to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of

that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) DETAILEES.—Any Federal employee may be detailed to the Board without reimbursement from the Board, and such detailee shall retain the rights, status, and privileges of the detailee's regular employment without interruption.

(3) CONSULTANT SERVICES.—The Board may procure the temporary or intermittent services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates that do not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(l) SECURITY CLEARANCES.—The appropriate Federal executive departments and agencies shall cooperate with the Board to expeditiously provide the Board members and staff with appropriate security clearances to the extent possible under existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(m) TREATMENT AS AGENCY, NOT AS ADVISORY COMMITTEE.—The Board—

(1) is an agency (as defined in section 551(1) of title 5, United States Code); and

(2) is not an advisory committee (as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.)).

(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

CHAPTER 2—MUTUAL AID AND LITIGATION MANAGEMENT

SEC. 5101. SHORT TITLE.

This chapter may be cited as the "Mutual Aid and Litigation Management Authorization Act of 2004".

SEC. 5102. MUTUAL AID AUTHORIZED.

(a) AUTHORIZATION TO ENTER INTO AGREEMENTS.—

(1) IN GENERAL.—The authorized representative of a State, locality, or the Federal Government may enter into an interstate mutual aid agreement or a mutual aid agreement with the Federal Government on behalf of the State, locality, or Federal Government under which, at the request of any party to the agreement, the other party to the agreement may—

(A) provide law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event occurring in the jurisdiction of the requesting party;

(B) provide other services to prepare for, mitigate, manage, respond to, or recover from an emergency or public service event occurring in the jurisdiction of the requesting party; and

(C) participate in training events occurring in the jurisdiction of the requesting party.

(b) LIABILITY AND ACTIONS AT LAW.—

(1) LIABILITY.—A responding party or its officers or employees shall be liable on account of any act or omission occurring while providing assistance or participating in a training event in the jurisdiction of a requesting party under a mutual aid agreement (including any act or omission arising from the maintenance or use of any equipment, facilities, or supplies in connection therewith), but only to the extent permitted under and in accordance with the laws and procedures of the State of the responding party and subject to this chapter.

(2) JURISDICTION OF COURTS.—

(A) IN GENERAL.—Subject to subparagraph (B) and section 5103, any action brought against a responding party or its officers or employees on account of an act or omission described in subsection (b)(1) may be brought only under the laws and procedures of the State of the responding party and only in the State courts or United States District Courts located therein.

(B) UNITED STATES AS PARTY.—If the United States is the party against whom an action described in paragraph (1) is brought, the action may be brought only in a United States District Court.

(c) WORKERS' COMPENSATION AND DEATH BENEFITS.—

(1) PAYMENT OF BENEFITS.—A responding party shall provide for the payment of workers' compensation and death benefits with respect to officers or employees of the party who sustain injuries or are killed while providing assistance or participating in a training event under a mutual aid agreement in the same

manner and on the same terms as if the injury or death were sustained within the jurisdiction of the responding party.

(2) LIABILITY FOR BENEFITS.—No party shall be liable under the law of any State other than its own (or, in the case of the Federal Government, under any law other than Federal law) for the payment of workers' compensation and death benefits with respect to injured officers or employees of the party who sustain injuries or are killed while providing assistance or participating in a training event under a mutual aid agreement.

(d) LICENSES AND PERMITS.—Whenever any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for professional, mechanical, or other skills, such person will be deemed licensed, certified, or permitted by the requesting party to provide assistance involving such skill under a mutual aid agreement.

(e) SCOPE.—Except to the extent provided in this section, the rights and responsibilities of the parties to a mutual aid agreement shall be as described in the mutual aid agreement.

(f) EFFECT ON OTHER AGREEMENTS.—Nothing in this section precludes any party from entering into supplementary mutual aid agreements with fewer than all the parties, or with another, or affects any other agreements already in force among any parties to such an agreement, including the Emergency Management Assistance Compact (EMAC) under Public Law 104–321.

(g) FEDERAL GOVERNMENT.—Nothing in this section may be construed to limit any other expressed or implied authority of any entity of the Federal Government to enter into mutual aid agreements.

(h) CONSISTENCY WITH STATE LAW.—A party may enter into a mutual aid agreement under this chapter only insofar as the agreement is in accord with State law.

SEC. 5103. LITIGATION MANAGEMENT AGREEMENTS.

(a) AUTHORIZATION TO ENTER INTO LITIGATION MANAGEMENT AGREEMENTS.—The authorized representative of a State or locality may enter into a litigation management agreement on behalf of the State or locality. Such litigation management agreements may provide that all claims against such Emergency Response Providers arising out of, relating to, or resulting from an act of terrorism when Emergency Response Providers from more than 1 State have acted in defense against, in response to, or recovery from such act shall be governed by the following provisions.

(b) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims against Emergency Response Providers arising out of, relating to, or resulting from an act of terrorism when Emergency Response Providers from more than 1 State have acted in defense against, in response to, or recovery from such act. As determined by the parties to a litigation management agreement, the substantive law for decision in any such action shall be—

(A) derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law; or

(B) derived from the choice of law principles agreed to by the parties to a litigation management agreement as described in the litigation management agreement, unless such principles are inconsistent with or preempted by Federal law.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim against Emergency Response Providers for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when Emergency Response Providers from more than 1 State have acted in defense against, in response to, or recovery from an act of terrorism.

(3) SPECIAL RULES.—In an action brought for damages that is governed by a litigation management agreement, the following provisions apply:

(A) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(B) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action governed by a litigation management agreement shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism.

(4) EXCLUSIONS.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(A) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(B) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 5104. ADDITIONAL PROVISIONS.

(a) NO ABROGATION OF OTHER IMMUNITIES.—Nothing in this chapter shall abrogate any other immunities from liability that any party may have under any other State or Federal law.

(b) EXCEPTION FOR CERTAIN FEDERAL LAW ENFORCEMENT ACTIVITIES.—A mutual aid agreement or a litigation management agreement may not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or to other law enforcement functions of the United States Secret Service.

(c) SECRET SERVICE.—Section 3056 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(g) The Secret Service shall be maintained as a distinct entity within the Department of Homeland Security and shall not be merged with any other department function. All personnel and operational elements of the United States Secret Service shall report to the Director of the Secret Service, who shall report directly to the Secretary of Homeland Security without being required to report through any other official of the Department.".

SEC. 5105. DEFINITIONS.

For purposes of this chapter, the following definitions apply:

(1) AUTHORIZED REPRESENTATIVE.—The term "authorized representative" means—

(A) in the case of the Federal Government, any individual designated by the President with respect to the executive branch, the Chief Justice of the United States with respect to the judicial branch, or the President pro Tempore of the Senate and Speaker of the House of Representatives with respect to the Congress, or their designees, to enter into a mutual aid agreement;

(B) in the case of a locality, the official designated by law to declare an emergency in and for the locality, or the official's designee;

(C) in the case of a State, the Governor or the Governor's designee.

(2) EMERGENCY.—The term "emergency" means a major disaster or emergency declared by the President, or a State of Emergency declared by an authorized representative of a State or locality, in response to which assistance may be provided under a mutual aid agreement.

(3) EMERGENCY RESPONSE PROVIDER.—The term "Emergency Response Provider" means State or local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities that are a party to a litigation management agreement.

(4) EMPLOYEE.—The term "employee" means, with respect to a party to a mutual aid agreement, the employees of the party, including its agents or authorized volunteers, who are committed to provide assistance under the agreement.

(5) LITIGATION MANAGEMENT AGREEMENT.—The term "litigation management agreement" means an agreement entered into pursuant to the authority granted under section 5103.

(6) LOCALITY.—The term "locality" means a county, city, or town.

(7) MUTUAL AID AGREEMENT.—The term "mutual aid agreement" means an agreement entered into pursuant to the authority granted under section 5102.

(8) PUBLIC SERVICE EVENT.—The term "public service event" means any undeclared emergency, incident, or situation in preparation for or response to which assistance may be provided under a mutual aid agreement.

(9) REQUESTING PARTY.—The term "requesting party" means, with respect to a mutual aid agreement, the party in whose jurisdiction assistance is provided, or a training event is held, under the agreement.

(10) RESPONDING PARTY.—The term "responding party" means, with respect to a mutual aid agreement, the party providing assistance, or participating in a training event, under the agreement, but does not include the requesting party.

(11) STATE.—The term "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(12) TRAINING EVENT.—The term "training event" means an emergency and public service event-related exercise, test, or other activity using equipment and personnel to prepare for or simulate performance of any aspect of the giving or receiving of assistance during emergencies or public service events, but does not include an actual emergency or public service event.

Chapter 3—Miscellaneous Matters

SEC. 5131. ENHANCEMENT OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.

(a) COORDINATION OF PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS PROGRAMS.—

(1) PROGRAM.—The Secretary of Homeland Security, in consultation with the Secretary of Commerce and the Chairman of the Federal Communications Commission, shall establish a program to enhance public safety interoperable communications at all levels of government. Such program shall—

(A) establish a comprehensive national approach to achieving public safety interoperable communications;

(B) coordinate with other Federal agencies in carrying out subparagraph (A);

(C) develop, in consultation with other appropriate Federal agencies and State and local authorities, appropriate minimum capabilities for communications interoperability for Federal, State, and local public safety agencies;

(D) accelerate, in consultation with other Federal agencies, including the National Institute of Standards and Technology, the private sector, and nationally recognized standards organizations as appropriate, the development of national voluntary consensus standards for public safety interoperable communications;

(E) encourage the development and implementation of flexible and open architectures, with appropriate levels of security, for short-term and long-term solutions to public safety communications interoperability;

(F) assist other Federal agencies in identifying priorities for research, development, and testing and evaluation with regard to public safety interoperable communications;

(G) identify priorities within the Department of Homeland Security for research, development, and testing and evaluation with regard to public safety interoperable communications;

(H) establish coordinated guidance for Federal grant programs for public safety interoperable communications;

(I) provide technical assistance to State and local public safety agencies regarding planning, acquisition strategies, interoperability architectures, training, and other functions necessary to achieve public safety communications interoperability;

(J) develop and disseminate best practices to improve public safety communications interoperability; and

(K) develop appropriate performance measures and milestones to systematically measure the Nation's progress towards achieving public safety communications interoperability, including the development of national voluntary consensus standards.

(2) OFFICE FOR INTEROPERABILITY AND COMPATIBILITY.—

(A) ESTABLISHMENT OF OFFICE.—The Secretary may establish an Office for Interoperability and Compatibility to carry out this subsection.

(B) FUNCTIONS.—If the Secretary establishes such office, the Secretary shall, through such office—

(i) carry out Department of Homeland Security responsibilities and authorities relating to the SAFECOM Program; and

(ii) carry out subsection (c) (relating to rapid interoperable communications capabilities for high risk jurisdictions).

(3) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to advisory groups established and maintained by the Secretary for purposes of carrying out this subsection.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall report to the Congress on Department of Homeland Security plans for accelerating the development of national voluntary consensus standards for public safety interoperable communications, a schedule of milestones for such development, and achievements of such development.

(c) RAPID INTEROPERABLE COMMUNICATIONS CAPABILITIES FOR HIGH RISK JURISDICTIONS.—The Secretary, in consultation with other relevant Federal, State, and

local government agencies, shall provide technical, training, and other assistance as appropriate to support the rapid establishment of consistent, secure, and effective interoperable communications capabilities for emergency response providers in jurisdictions determined by the Secretary to be at consistently high levels of risk of terrorist attack.

(d) DEFINITIONS.—In this section:

(1) INTEROPERABLE COMMUNICATIONS.—The term "interoperable communications" means the ability of emergency response providers and relevant Federal, State, and local government agencies to communicate with each other as necessary, through a dedicated public safety network utilizing information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

(2) EMERGENCY RESPONSE PROVIDERS.—The term "emergency response providers" has the meaning that term has under section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)

(e) CLARIFICATION OF RESPONSIBILITY FOR INTEROPERABLE COMMUNICATIONS.—

(1) UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.—Section 502(7) of the Homeland Security Act of 2002 (6 U.S.C. 312(7)) is amended—

(A) by striking "developing comprehensive programs for developing interoperative communications technology, and"; and

(B) by striking "such" and inserting "interoperable communications".

(2) OFFICE FOR DOMESTIC PREPAREDNESS.—Section 430(c) of such Act (6 U.S.C. 238(c)) is amended—

(A) in paragraph (7) by striking "and" after the semicolon;

(B) in paragraph (8) by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(9) helping to ensure the acquisition of interoperable communication technology by State and local governments and emergency response providers.".

SEC. 5132. SENSE OF CONGRESS REGARDING THE INCIDENT COMMAND SYSTEM.

(a) FINDINGS.—The Congress finds that—

(1) in Homeland Security Presidential Directive–5, the President directed the Secretary of Homeland Security to develop an incident command system to be known as the National Incident Management System (NIMS), and directed all Federal agencies to make the adoption of NIMS a condition for the receipt of Federal emergency preparedness assistance by States, territories, tribes, and local governments beginning in fiscal year 2005;

(2) in March 2004, the Secretary of Homeland Security established NIMS, which provides a unified structural framework for Federal, State, territorial, tribal, and local governments to ensure coordination of command, operations, planning, logistics, finance, and administration during emergencies involving multiple jurisdictions or agencies; and

(3) the National Commission on Terrorist Attacks Upon the United States strongly supports the adoption of NIMS by emergency response agencies nationwide, and the decision by the President to condition Federal emergency preparedness assistance upon the adoption of NIMS.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that all levels of government should adopt NIMS, and that the regular use of and training in NIMS by States, territories, tribes, and local governments should be a condition for receiving Federal preparedness assistance.

SEC. 5133. SENSE OF CONGRESS REGARDING UNITED STATES NORTHERN COMMAND PLANS AND STRATEGIES.

It is the sense of Congress that the Secretary of Defense should regularly assess the adequacy of United States Northern Command's plans and strategies with a view to ensuring that the United States Northern Command is prepared to respond effectively to all military and paramilitary threats within the United States.

PURPOSE AND SUMMARY

The terrorist attacks of September 11, 2001 took the lives of more than 3,000 Americans and represented the most catastrophic terrorist attack on the United States in its history. The terrorists exploited deficiencies in America's law enforcement, immigration, and intelligence agencies which limited the dissemination of information that might have protected the nation against the attack. In the wake of the attacks, the Committee has conducted 39 hearings and markups to examine proposals to remedy legislative, proce-

dural, and structural vulnerabilities to terrorism in our nation's immigration system. The Committee has also conducted 46 hearings and markups to strengthen federal law enforcement and antiterrorism efforts, and it has taken firm steps to ensure that security efforts do not transgress cherished civil liberties. Furthermore, the Committee has conducted rigorous oversight of antiterrorism reform efforts at the Department of Justice, and acted with bipartisan dispatch to enact antiterrorism legislation including the USA PATRIOT Act and the Homeland Security Act.

On November 27, 2002, President Bush signed legislation creating the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission" or "Commission"). The Commission's principal responsibility was to examine and report on the facts and causes relating to the terrorist attacks of September 11, 2001, and to suggest measures to better secure the nation. On July 22, 2004, the Commission delivered its unanimous recommendations to Congress. During August and September, 2004, a variety of congressional committees held hearings on the recommendations. On September 29, 2004, Speaker Hastert introduced H.R. 10, the "9/11 Recommendations Implementation Act," to provide legislative substance to the Commission's recommendations.

The legislation consists of five titles entitled: Reform of the Intelligence Community; Terrorism Prevention and Prosecution; Border Security and Terrorist Travel; International Cooperation and Coordination; and Government Restructuring. Several provisions within the legislation fall within the jurisdiction of the Committee on the Judiciary.

The creation of a National Intelligence Director and the establishment of a National Counterterrorism Center in Title I of H.R. 10 are key reforms that will help ensure that the wall of separation dividing intelligence and law enforcement is never again exploited to revisit terrorist attacks upon the United States. Section 1112 codifies ongoing efforts of the Federal Bureau of Investigation to assess and prevent terrorists attacks before they occur.

In Title II, §§ 2001, 2021–2024, 2041–2044, and 2051–2053 contain important provisions that enhance penalties for terrorism hoaxes, increase penalties for supporting, financing, or cooperating with terrorist organizations, and expand the scope of laws that prohibit the shipment or use of weapons of mass destruction. Sections 2101 and 2102 provide additional funding to combat terrorist financing, and §§ 2171–2173 enhance the use of biometric technology to reduce terrorist threats against air travel.

Title III of the legislation contains important provisions to enhance border security and reduce opportunities for terrorists to enter and stay in the United States. Section 3001 implements a Commission recommendation requiring Americans returning from travel in the Western Hemisphere to possess passports. Section 3002 requires Canadians seeking entry into the United States to present a passport or other secure identification. Section 3003 authorizes 2,000 new Border Patrol agents for each of the next five years. Section 3004 authorizes 800 additional ICE investigators for each of the next five years. Section 3005 reduces the risk of identify and document fraud, and §§ 3006–3009 and 3031–33 provide for the expedited removal of illegal aliens, limit asylum abuse by terrorists, and streamline the removal of terrorists and other criminal

aliens. Nearly every one of these provisions reflect Commission recommendations. Many of them arise from legislation proposed by the Judiciary Committee.

The legislation contains key provisions that safeguard the civil liberties of all Americans. Specifically, § 1022 establishes a civil liberties protection officer to ensure that civil liberties and privacy protections are incorporated in the policies implemented by the National Intelligence Director. Modeled on legislation originally introduced by Constitution Subcommittee Chairman Chabot, § 5091 requires federal agencies to prepare a privacy impact analysis for proposed and final rules during the rulemaking process. Finally, § 5092 directs the head of each Federal agency with law enforcement or antiterrorism functions to appoint a chief privacy officer to protect against privacy abuses.

In short, H.R. 10 reflects a careful, thoughtful, and principled response to the 9/11 Commission's bipartisan Report and staff report, and it provides additional tools and resources needed to fight and win the war on terror.

BACKGROUND AND NEED FOR THE LEGISLATION

THE EVENTS OF SEPTEMBER 11, 2001 AND THE CONGRESSIONAL RESPONSE

Summary of Key Legislation Enacted Into Law Following the Attacks of September 11, 2001

The terrorist attacks on the World Trade Center and the Pentagon took more than 3,000 lives, caused approximately $100 billion in economic losses, triggered U.S. military intervention in Afghanistan to topple the Taliban regime, and led to passage of a historic overhaul of federal law enforcement policies and priorities culminating in the enactment of the USA PATRIOT Act.[1] These events also led to House passage of legislation to tighten security at America's airports,[2] reform the airport security screening process,[3] abolish the Immigration and Naturalization Service,[4] improve wireless 911 emergency response services,[5] improve oil and gas pipeline safety research,[6] enhance border security,[7] and establish the Department of Homeland Security.[8] Other antiterrorism legislation Congress enacted in the wake of these attacks includes: the Enhanced Border Security and Visa Reform Act,[9] the Antiterrorism Explosives Act,[10] the Terrorist Bombing Convention Implementa-

[1] Pub. L. No. 107–56, 115 Stat 272 (codified as amended in scattered sections of 18 U.S.C.) (2001).

[2] "Air Transportation Safety and System Stabilization Act," Pub. L. No. 107–42, 115 Stat. 230 (2001).

[3] "Aviation and Transportation Security Act," Pub. L. No. 107–56, 115 Stat 597 (codified as amended in 49 U.S.C.) (2001).

[4] H.R. 3231, the "Barbara Jordan Immigration Reform and Accountability Act," 107th Congress (2002), (passed the House of Representatives, April 25, 2002).

[5] H.R. 2898, The "E–911 Implementation Act of 2003," 108th Congress (2003), (passed the House of Representatives, October 14, 2003).

[6] Pub. L. No. 107–355, 116 Stat 2985 (codified as amended in 49 U.S.C.) (2002).

[7] "Enhanced Border Security and Visa Entry Reform Act of 2002," Pub. L. No. 107–173, 116 Stat 543 (2002).

[8] Pub. L. No. 107–296, 116 Stat 2135 (codified as amended in 6 U.S.C.) (2002).

[9] Pub. L. No. 107–173, 116 Stat 42 (codified as amended in 8 U.S.C.) (2002).

[10] H.R. 4864, the "Anti-Terrorism Explosives Act," 107th Congress (2002), enacted as part of the Homeland Security Act.

tion Act,[11] the Terrorism Risk Insurance Act,[12] and the Homeland Security Information Act.[13]

Principal Hearings Before the Committee on the Judiciary Responding to the Terrorist Attacks of September 11, 2001

In addition to these legislative initiatives, the House Committee on the Judiciary has conducted nearly 100 hearings to better protect the American people against terrorist attacks since September 11, 2001. Many of these hearings examined legislative initiatives contained in H.R. 10.

Strengthening Border Security to Reduce the Risk of Terrorist Attacks

The Subcommittee on Immigration, Border Security, and Claims has focused special attention on the legislative, procedural, and technological vulnerabilities in our nation's immigration system to identify and remedy them. Since the attacks, the Subcommittee has conducted thirty-nine hearings on immigration matters. Among the most critical of these are hearings entitled: "Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives"; "US–VISIT: A Down Payment on Homeland Security"; "Funding for Immigration in the President's 2005 Budget"; "War on Terrorism: Immigration Enforcement Since September 11, 2001"; "Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement"; "Immigrant Student Tracking: Implementation and Proposed Modification"; "The Immigration and Naturalization Service's Interactions with Hesham Mohamed Ali Hedayet"; "The Role of Immigration in the Department of Homeland Security"; "The Risk to Homeland Security From Identity Fraud and Identity Theft"; "The INS's March 2002 Notification of Approval of Change of Status for Pilot Training for Terrorist Hijackers Mohammed Atta and Marwan Al-Shehhi"; "the Implications of Transnational Terrorism for the Visa Waiver Program"; and "Using Information Technology to Secure America's Borders." Before 9/11, the Subcommittee also focused on terrorist infiltration into the United States, including an oversight hearing on "Terrorist Threats to the United States."

Restructuring Federal Law Enforcement and Enhancing Criminal Penalties to Reduce the Risk of Terrorist Attacks

Since 9/11, the Subcommittee on Crime, Terrorism, and Homeland Security has held thirty-four hearings on law enforcement matters. Among the most important of these are hearings entitled: "Law Enforcement Efforts Within the Department of Homeland Security;" "Homeland Security—the Balance Between Crisis and Consequence Management through Training and Assistance (Review of Legislative Proposals)"; "Terrorism and War-Time Hoaxes"; "The Proposal to Create a Department of Homeland Security"; "The Risk to Homeland Security From Identity Fraud and Identity Theft"; the "Antiterrorism Explosives Act of 2002"; the "Homeland Security Information Sharing Act"; the "Cyber Security Enhancement Act";

[11] Pub. L. No. 107–197, 116 Stat 72 (codified as amended in 18 U.S.C.) (2002).
[12] Pub. L. No. 107–297, 116 Stat 2322 (codified as amended in 15 U.S.C.) (2002).
[13] H.R. 4930, the "Homeland Security Information Sharing and Analysis Enhancement Act of 2004," 108th Congress (2004), enacted as part of the Homeland Security Act.

"Implementation Legislation for the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism"; and the "Anti-Hoax Terrorism Act of 2001." The Subcommittee on Courts, the Internet, and Intellectual Property also conducted a hearing to examine links between organized crime, terrorism, and intellectual property theft.

In addition to these hearings, the Crime Subcommittee, in the spirit of cooperation, has held a joint hearing with the Select Committee on Homeland Security on the Terrorism Threat Integration Center ("TTIC"); jointly sent letters with post-hearing questions to the relevant agencies on the implementation of TTIC, and conducted a joint hearing on the integration of terrorism watchlists at the Terrorism Screening Center.

The Committee on the Judiciary has also conducted oversight through other means. It has sent two major oversight letters to the Attorney General on the implementation of the USA PATRIOT Act. These letters were aimed at ensuring that the Department of Justice maintains a proper balance between security and civil liberties in implementing the Act. The Committee has also closely monitored the activities of the Department of Homeland Security ("DHS") recently sending letters to the Directors of Immigration Customs Enforcement ("ICE") and the Federal Protective Service regarding their law enforcement missions at the Department of Homeland Security.

In addition, the Committee has requested several General Accounting Office ("GAO") reports in this area including: "Combating Terrorism: Funding Data Reported to Congress Should be Improved"; "Social Security Administration: Disclosure Policy for Law Enforcement Allows Information Sharing, But SSA Needs to Ensure Consistent Application"; and "Firearms Control: Federal Agencies Have Firearms Controls, But Could Strengthen Controls in Key Areas".

In the law enforcement and law enforcement training area, the Crime Subcommittee held a joint hearing with a subcommittee of the Select Committee on Homeland Security on consolidating terrorist watch lists. The Subcommittee held a hearing and markup on H.R. 2934, a bill to expand the death penalty to additional acts of terrorism. The full committee reported that bill on June 23, 2004. The Subcommittee held a hearing on H.R. 3179, a bill to enhance law enforcement powers in stopping terrorism. The Subcommittee has been working closely with the Select Committee on Homeland Security on H.R. 3266, a bill to improve grants to first responders, which the full committee reported On June 16, 2004. Finally, the Committee is working closely with the Select Committee on yet to be introduced legislation to reauthorize the Department of Homeland Security.

Privacy, Civil Liberties, and the Conduct of the War on Terrorism

The Committee on the Judiciary has conducted a number of hearings to ensure that civil liberties are preserved in the nation's war against terrorism. The USA Patriot Act contained several sunset provisions, many of which are set to expire next year. In addition, the full committee has conducted rigorous oversight of DOJ's efforts against terrorism and its implementation of the USA Patriot

Act. The Subcommittee on Commercial and Administrative Law and the Subcommittee on the Constitution conducted a hearing entitled "Civil Liberties in the Hands of the Government Post-September 11, 2001: Recommendations of the 9/11 Commission and the U.S. Department of Defense Technology and Privacy Advisory Committee." A similar joint hearing examined "'The Defense of Privacy Act' and Privacy in the Hands of the Government." In addition, the Subcommittee on the Constitution held a hearing entitled "Anti-Terrorism Investigations and the Fourth Amendment After September 11: Where and When Can the Government Go to Prevent Terrorist Attacks?" Finally, the Commercial and Administrative Law held a hearing entitled: "Administrative Law, Adjudicatory Issues, and Privacy Ramifications of Creating a Department of Homeland Security."

National Commission on Terrorist Attacks Upon the United States

Mission and Members of the Commission

On November 27, 2002, President George W. Bush signed legislation creating the National Commission on Terrorist Attacks Upon the United States.[14] The Commission's principal responsibility was to "examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001," with respect to intelligence and law enforcement agencies, diplomacy, immigration and border control, the flow of assets to terrorist organizations, commercial aviation, and the role of congressional oversight and resource allocation, among other matters, and to suggest "corrective measures that can be taken to prevent acts of terrorism."[15]

Members of the Commission included: Thomas Kean (Chair), Republican, former Governor of New Jersey; Lee H. Hamilton (Vice Chair), Democrat, former U.S. Representative from the 9th District of Indiana; Richard Ben-Veniste, Democrat, attorney, former chief of the Watergate Task Force of the Watergate Special Prosecutor's Office; Fred F. Fielding, Republican, attorney, former Counsel to President Reagan; Jamie Gorelick, Democrat, former Deputy Attorney General in the Clinton Administration; Slade Gorton, Republican, former Senator from Washington; Bob Kerrey, Democrat, former Senator from Nebraska; John F. Lehman, Republican, former Secretary of the Navy in the Reagan Administration; Timothy J. Roemer, Democrat, former U.S. Representative from the 3rd District of Indiana; James R. Thompson, Republican, former Governor of Illinois.

Over the course of its approximately 20-month existence, the Commission reviewed more than 2.5 million pages of documents and interviewed more than 1,200 individuals in ten countries. It held 19 days of hearings and received public testimony from 160 witnesses.[16] Present and former government officials testified before the Commission, including: Colin Powell, United States Secretary of State; Richard Armitage, Deputy Secretary of State; Madeleine Albright, former Secretary of State; Donald H. Rumsfeld, Secretary of Defense; Paul Wolfowitz, Deputy Secretary of Defense;

[14] Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 107–306, Title VI, 116 Stat. 2383, 2408–13 (2002).
[15] Id. at §§ 602(1), (5), 604.
[16] 9/11 Commission Report, supra note 12, at xv.

William Cohen, former Secretary of Defense; Condoleezza Rice, National Security Advisor to the President; Sandy Berger, former National Security Advisor; Richard Clarke, former counterterrorism official for Presidents George H.W. Bush, Bill Clinton, and George W. Bush; Vice President Dick Cheney; former President Bill Clinton, and former Vice President Al Gore.

Report of the Commission

Pursuant to its statutory mandate, the Commission submitted its final report and unanimous recommendations to Congress and the President on July 22, 2004.[17] The 567-page report provides a detailed chronicle of the events leading up to the September 11th attacks. The paperback version of the report has since become a "national bestseller, a first for such a commission report."[18] As part of its analysis of these events, the Commission identified "fault lines within our government—between foreign and domestic intelligence, and between and within agencies."[19] The Commission also cited "pervasive problems of managing and sharing information across a large and unwieldy government that had been built in a different era to confront different dangers."[20]

H.R. 10, THE "9/11 RECOMMENDATIONS IMPLEMENTATION ACT"

On September 29, 2004, Speaker Hastert introduced H.R. 10, the "9/11 Recommendations Implementation Act" which reflects the bipartisan recommendations of the Commission. The legislation consists of five titles: Reform of the Intelligence Community; Terrorism Prevention and Prosecution; Border Security and Terrorist Travel; International Cooperation and Coordination; and Government Restructuring.

Summary of Principal Provisions of H.R. 10 Within the Jurisdiction of the Committee on the Judiciary[21]

TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

Section 1011. Reorganization and improvement of management of intelligence community

Section 1011 replaces sections 102 through 104 of Title I of the National Security Act of 1947 (50 U.S.C. 402 et. seq.) with new sections 102, 102A, 103, 103A, 104 and 104A. New section 102 replaces the Director of Central Intelligence ("DCI") with a National Intelligence Director ("NID") as recommended by the Commission. The NID will be appointed by the President and confirmed by the Senate, and will serve as the head of the intelligence community. The NID may not simultaneously serve as the DCI or as the head of any other element of the intelligence community. This section also establishes a clear chain of command to ensure that while the NID will manage and oversee the Intelligence Community, the NID

[17] Press Release, 9/11 Commission, 9/11 Commission Releases Unanimous Final Report—Calls for Quick Action on Recommendations to Prevent Future Attacks (July 22, 2004), at http://www.9–11commission.gov/press/pr_2004–07–22.pdf.
[18] Jim VandeHei, 9/11 Panel Roiling Campaign Platforms, Wash. Post, Aug. 9, 2004, at A1.
[19] 9/11 Commission Report, supra note 12, at xvi.
[20] Id.
[21] This section contains a summary of principal provisions of H.R. 10 within the jurisdiction of the Committee; it does not comprise an exhaustive list of provisions of H.R. 10 within the jurisdiction of the Committee.

will do this through the heads of the Departments containing the elements of the intelligence community. The Committee supports the language requiring the NID to work through the heads of the Departments to ensure accountability and responsibility through a clear chain of command.

New § 102A sets out the responsibilities and authorities of the NID. This section provides that the NID shall have access to all national intelligence and intelligence related to the national security, except as otherwise provided by law or guidelines agreed upon by the Attorney General and the NID. The NID will develop and present the annual budget for the National Intelligence Program ("NIP"). The NID must report to the Committees on Judiciary, Intelligence, and Armed Services on any transfer of personnel relative to the Committees' jurisdiction. Additionally, this section requires the NID to ensure that the Intelligence Community through the Host Departments that contain the elements of the Intelligence Community comply with the Constitution and the laws of the United States. At the Committee's recommendation, H.R. 10 contains a provision clarifying that nothing in this Act shall be construed as affecting the role of the Department of Justice or the Attorney General with respect to applications under the Foreign Intelligence Surveillance Act of 1978.

New § 103 establishes the Office of the NID to assist the Director in the performance of his or her duties. This section establishes specific responsibilities for a number of Deputies and Associates to assist the NID. The Associate National Intelligence Director for Domestic Security is to ensure that the intelligence needs of the Department of Justice and other relevant executive branch agencies are met. At the same time, the language restricts this position from disseminating domestic or homeland security information to State and local government officials and the private sector.

New §104 establishes that the DCI shall assist the NID. These responsibilities include: (1) collecting intelligence through human sources and by other appropriate means, except that the DCI shall have no police, subpoena, or law enforcement powers or internal security functions; and (2) providing overall direction for the collection of national intelligence overseas or outside of the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensuring that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized. The Manager's Amendment reported by the Committee inserted the qualifying phrase "overseas or outside the United States" to clarify that the CIA's collection authority is not domestic. The Committee also supported the continued limitation that the CIA shall not have police, subpoena, or other law enforcement powers.

Section 1012. Revised definition of national intelligence

This section defines "national intelligence" and "intelligence related to national security" to refer to all intelligence, regardless of source, and to include information collected both domestically and overseas, that involves threats to the United States, its people, property or interests; the development or use of weapons of mass

destruction; or any other matter bearing on the national or homeland security of the Untied States.

Section 1014. Role of the National Intelligence Director in appointment of certain officials responsible for intelligence-related activities

This section amends § 106 of the National Security Act to authorize the NID to recommend to the President individuals for appointment as the Deputy NID and the DCI. The section also allows the NID to concur with the Secretary of Defense in the selection of the head of the National Security Agency, National Reconnaissance Office, and the National Geospatial-Intelligence Agency. The NID shall consult, under this section on the selection for the positions of the Defense Intelligence Agency, Assistant Secretary of State for Intelligence and Research, Director of the Office of Intelligence of the Department of Energy, Director of the Office of Counterintelligence of the Department of Energy, Assistant Secretary for Intelligence and Analysis of the Department of Treasury, Executive Assistant Director for the Intelligence of the Federal Bureau of Investigation ("FBI") or successor, Undersecretary of Homeland Security for Information Analysis and Infrastructure Protection, and the Deputy Assistant Commandant of the Coast Guard for Intelligence. Due to an ongoing restructuring at the FBI, the Committee added the phrase "or that officer's successor" to cover any new intelligence office at the FBI.

The bill also establishes the new National Counterterrorism Center and provides authority to establish other national intelligence centers ("NICs"). The NID shall also have authority to select appointees for some intelligence positions and consult with Congress in the selection of others. (§§ 1001–1016).

Section 1021. National Counterterrorism Center

The Commission's Report "recommend[ed] the establishment of a National Counterterrorism Center, built on the foundation of the existing Terrorist Threat Integration Center ("TTIC"). Breaking the older mold of national government organization, this NCTC should be a center for joint operational planning and joint intelligence, staffed by personnel from the various agencies. The head of the NCTC should have authority to evaluate the performance of the people assigned to the Center." Commission Report at 403. Section 1021 establishes the National Counterterrorism Center ("NCTC"), which will be the primary organization for analyzing and integrating all intelligence possessed or acquired by the U.S.—except for intelligence pertaining exclusively to domestic counterterrorism. The NCTC will also support the Department of Justice, Department of Homeland Security, and other agencies in fulfillment of their responsibilities to disseminate terrorism information consistent with the law and guidelines agreed to by the Attorney General and the NID. The Committee added the reference to the AG guidelines in the Manager's Amendment.

Section 1022. Civil Liberties Protection Officer

Section 1022 requires the NID to appoint a Civil Liberties Protection Officer ("CLPO") who would be responsible for ensuring that civil liberties and privacy protections are appropriately incor-

porated in the policies and procedures developed and implemented by the Office of the NID ("ONID"). In addition, the CLPO must: (1) oversee compliance by the ONID and the NID with the Constitution and all laws, regulations, executive orders and implementing guidelines relating to civil liberties and privacy; (2) review and assess complaints and other information indicating possible civil liberties or privacy abuses; (3) ensure that the utilization of technologies sustain privacy protections regarding the use, collection, and disclosure of personal information; (4) ensure that personal information contained in a system of records (as defined in the Privacy Act) is handled in full compliance with the Act's fair information practices; (5) conduct privacy impact assessments when appropriate or required by law; and (6) perform such other duties as prescribed by the NID or required by law. Section 1022 authorizes the CLPO to refer complaints of civil liberties or privacy abuse to the appropriate Office of Inspector General responsible for the intelligence community department or agency to investigate. This provision reflects the following Commission recommendation: "At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties." (Commission Report at 395).

Section 1031. Joint Intelligence Community Council

This section establishes the Joint Intelligence Community Council which will provide advice to the NID from the various heads of the Departments that contain elements of the Intelligence Community, including the Attorney General.

TITLE II—TERRORISM PREVENTION AND PROSECUTION

Section 2001. Individual Terrorists as Agents of Foreign Powers

The Commission suggests on page 54 of its Report that terrorism can be conducted by those who are acting alone and not depending on al Qaeda or other terrorist organizations as a source of funding but as a source of inspiration. The Report found that the premise behind the government's efforts here—that terrorist operations need a financial support network—may itself be outdated. The effort to find, track, and stop terrorist money presumes that it is being sent from a central source or group of identifiable sources. Some terrorist operations do not rely on outside sources of money, and cells may now be self-funding, either through legitimate employment or through low-level criminal activity. Terrorist groups only remotely affiliated with al Qaeda pose a significant threat of mass casualty attacks. Our terrorist-financing efforts can do little to stop them, as there is no "central command" from which the money flowed, as in the 9/11 attacks.

Section 2001 of the bill as introduced addresses the lone terrorist acting on inspiration rather than affiliation. When the Foreign Intelligence Surveillance Act ("FISA") was enacted in the 1970s, terrorists usually were members of distinct, hierarchical terror groups. Today, the "lone wolfs" often are not formal members of any group. Instead, they are part of a loosely organized movement, such as Jihad Against America, and act alone. FISA authority

should be updated to reflect this new threat. This section amends 50 U.S.C. § 1801(b)(1) by adding new subparagraph C. Section 1801(b)(1) defines "Agent of a foreign power" for any person other than a United States person, who:

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;

The definition is used to determine the target of a surveillance under FISA. Section 4 adds new subparagraph C to the definition, which states "engages in international terrorism or activities in preparation therefor." This new definition reaches unaffiliated individuals who engage in international terrorism, i.e. "lone wolf" terrorists. Specifically, the language expands the FISA definition of "agent of a foreign power" to include a presumption that all non-U.S. persons who engage in international terrorism meet the definition of an agent of a foreign power.

This section as introduced does not change the requirement for a judicial finding of probable cause that the target is an agent of a foreign power. (*See* § 1805(a)(3) and (b)) The new definition requires that for a non-U.S. person to be found to be an agent of a foreign power that person must be engaged in international terrorism. Thus, under the probable cause requirement currently in law and the new definition in this section—before a judge can issue a FISA order for surveillance—there must be a showing of probable cause that the person is engaged or preparing to engage in international terrorism.

At markup, the Committee adopted by voice vote a Berman amendment that substantially changed this section. The Berman amendment adds a new section to the Foreign Intelligence Surveillance Act of 1978. It allows the court to assume that a non-U.S. person who is engaged in terrorism is an agent of a foreign power under the Act.

Sections 2021–2024. Stop Terrorist and Military Hoaxes Act of 2004

The Commission Report found that "hard choices must be made in allocating limited resources," and that "terrorists should perceive that potential targets are defended" (See Commission Report at 391). Further, the Commission found that "throughout the government, nothing has been harder for officials * * * than to set priorities, making hard choices in allocating limited resources" (See Commission Report at 395). In furtherance of this finding, this subtitle creates criminal and civil penalties for whoever engages in any conduct, with intent to convey false or misleading information, that concerns an activity which would constitute such crimes as those relating to: Explosives; firearms; destruction of vessels; terrorism; sabotage of nuclear facilities; aircraft piracy; a dangerous weapon to assault flight crew members and attendants; explosives on an

aircraft; homicide or attempted homicide or damaging or destroying facilities. The subtitle also prohibits making a false statement with intent to convey false or misleading information about the death, injury, capture, or disappearance of a member of the U.S. armed forces during a war or armed conflict in which the United States is engaged. Additionally, the bill increases penalties from not more than 5 years to not more than 10 years for making false statements, and obstructing justice, if the subject matter relates to international or domestic terrorism.

Sections 2041–2044. Material Support to Terrorism Prohibition Enhancement Act of 2004

The Commission Report noted on page 68 that as early as December 1993, a team of al Qaeda operatives had begun casing targets in Nairobi for future attacks. It was led by Ali Mohamed, a former Egyptian army officer who had moved to the United States in the mid–1980s, enlisted in the U.S. Army, and became an instructor at Fort Bragg. He had provided guidance and training to extremists at the Farouq mosque in Brooklyn, including some who were subsequently convicted in the February 1993 attack on the World Trade Center. Additionally, as the report states on page 365, terrorism financing is a part of providing material support to terrorists. Material support may also consist of training.

Section 2042 establishes a new crime of material support for terrorism for knowingly receiving military training from a foreign terrorist organization. The section requires that any person charged under this section must have knowledge that the organization is a terrorist organization. It also defines the term "military-type training." The section provides for extraterritorial federal jurisdiction over an offense under this section.

Section 2043. Providing Material Support to Terrorism

The 9/11 Commission Report noted on pages 365–66 that "a complex international terrorist operation aimed at launching a catastrophic attack cannot be mounted by just anyone in any place. Such operations appear to require (among others):

1. Time, space, and ability to perform competent planning and staff work;
2. Opportunity and space to recruit, train, and select operatives with the needed skills and dedication, providing the time and structure required to socialize them into the terrorist cause, judge their trustworthiness, and hone their skills;
3. A logistics network able to securely manage the travel of operatives, move money, and transport resources (like explosives) where they need to go; and
4. Access, in the case of certain weapons, to the special materials needed for a nuclear, chemical, radiological, or biological attack.

The Commission on page 215 noted that it was "unlikely" that two of the 9/11 hijackers, "Hazmi and Mihdhar—neither of whom, in contrast to the Hamburg group, had any prior exposure to life in the West—would have come to the United States without arranging to receive assistance from one or more individuals informed in advance of their arrival." It further noted, that "our inability to ascertain the activities of Hazmi and Mihdhar during

their first two weeks in the United States may reflect al Qaeda tradecraft designed to protect the identity of anyone who may have assisted them during that period." Without this material support structure in place, the two hijackers would have unlikely been able to sustain an existence without raising suspicions or feeling lost in an unfamiliar environment.

Section 2043 expands the crime of material support to terrorists to include any act of international or domestic terrorism and require that any person charged under this section must have knowledge that the organization is a terrorist organization. It also more clearly defines the term material support.

Section 2044. Financing of Terrorism

This section amends 18 USC §2339C so that those who raise funds for terrorism can be prosecuted prior to the funds being transmitted to terrorist organizations.

Sections 2051–2053. Weapons of Mass Destruction Prohibition Improvement Act of 2004

The Commission Report states "that al Qaeda has tried to acquire or make weapons of mass destruction for at least ten years. There is no doubt the United States would be a prime target. Preventing the proliferation of these weapons warrants a maximum effort—by strengthening counter proliferation efforts, * * *" (See Commission Report at 381) Section 2052 amends 18 U.S.C. § 2332a(a)(2), which makes it a crime for a person to use a weapon of mass destruction (other than a chemical weapon) against any person within the U.S., and the result of such use affects interstate and foreign commerce. This legislation would expand the coverage of the target to include property. The bill would also expand Federal jurisdiction by covering the use of mail or any facility of interstate or foreign commerce for the attack, by the property being used for interstate or foreign commerce, and when the perpetrator travels or causes another to travel in interstate or foreign commerce in furtherance of the offense. This section would also expand coverage to include the use of a chemical weapon.

Section 2101–2102. Money Laundering and Terrorist Financing

The Commission Report found that: "vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts. The government has recognized that information about terrorist money helps us to understand their networks, search them out, and disrupt their operations. These efforts have worked. The death or capture of several important facilitators has decreased the amount of money available to al Qaeda and has increased its costs and difficulty in raising and moving that money. Captures have additionally provided a windfall of intelligence." (See Commission Report at 382)

This section authorizes funding for the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"). It provides funding for the following: (1) key technological improvements in FinCEN systems providing authorized law enforcement agencies with Web-based access to FinCEN data; (2) expedited filing of suspicious activity reports with the ability to immediately alert financial institutions about suspicious activities; (3) provision of infor-

mation sharing technologies to improve the Government's ability to exploit the information in the FinCEN databases; and (4) provision of training in the use of technologies available to detect and prevent financial crimes and terrorism.

Sections 2141–2146. Criminal History Background Checks

The Commission Report states that "secure identification should begin in the United States * * * at many entry points to vulnerable facilities * * * sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists." (See Commission Report at 390) The Report also states that "the private sector controls 85 percent of the critical infrastructure in the nation * * * the 'first' first responders will almost certainly be civilians" (See Commission Report at 398) In furtherance of these findings, this subtitle addresses the issue of criminal history records as they relate to background investigations.

This subtitle requires the Attorney General to initiate, establish, and maintain a system for providing employers with criminal history information if the information is requested as part of an employee background check that is authorized by the State where the employee works or where the employer has its principal place of business. This subtitle also gives the Attorney General flexibility, based on real time terror concerns, to mandate criminal history record checks for certain types of employment that involve positions vital to the nation's infrastructure or key resources. This subtitle also establishes a mechanism for private security officer employers to request criminal history records as part of a background investigation and establishes a task force to examine the creation of a clearinghouse to facilitate criminal record request exchanges involving applicants for security officer employment.

This section would allow a standardized approach to the numerous requests from groups that want or need access to these records. A piecemeal approach has evolved as the various bills that authorize these go to different committees for consideration and, when passed, end up in different sections of the code. Some of the groups that have legislation enacted for their individual industries include: banking, parimutuel wagering, securities, aviation, hazardous materials transportation, nuclear energy, Indian gambiing, nursing and home health care, and public housing.

There are several other industries and groups that are seeking authority to request a check of these records as part of their applicant screening process. This section sets up a standard process with uniform procedures, definitions, fee structures where practical, and reasonable safeguards to protect privacy and employee rights. A reporting requirement under this section seeks to identify all statutory requirements that already require the Department of Justice to perform some type of record check, the type of information requested, and any variances that exist in terms, definitions, and fees charged. The amendment offered by Mrs. Blackburn, which was adopted, makes this a pilot study and establishes specific criteria to be addressed in the report that is required, including the effectiveness of using commercially available data bases as part of criminal history information checks. The Committee intends that this study last for 180 days.

Section 2143 amends Public Law 108–21 extending from 18 months to 30 months, the duration of existing pilot programs for volunteer groups to obtain national and state criminal history background checks.

Section 2144 was added by the Blackburn amendment. It is the text of S.1743, the "Private Security Officer Employment Authorization Act," which passed the Senate by unanimous consent at the end of 2003, and was the topic of a legislative hearing on March 30th, 2004, before the Subcommittee on Crime, Terrorism, and Homeland Security. This section makes findings as to the important role that private security officers play and stresses the importance of thoroughly screening and training officers. This section establishes a mechanism for authorized employers of security guards to request criminal history background checks using existing State identification bureaus. The criteria for disqualification mirror existing state criteria and where a state has no criteria for such employment, this section provides general disqualifiers. A state may decline to participate in the program established by this section.

Section 2145, created by the Blackburn amendment, establishes a task force to examine the establishment of a national clearinghouse to process criminal history record requests from employers providing private security guard services. The Committee intends that the clearinghouse described in § 2145 shall only process criminal history record requests pertaining to employees or prospective employees of the private security guard service making the request pursuant to that section.

Section 2191. Grand jury information sharing

The Commission recommended on page 417 of its report that "Information procedures should provide incentives for sharing, to restore a better balance between security and shared knowledge. On page 355, the report listed several examples of failures of information sharing before the September 11th attacks. In January 2001: the CIA did not inform the FBI that a source had identified Khallad, or Tawfiq bin Attash, a major figure in the October 2000 bombing of the USS Cole, as having attended the meeting in Kuala Lumpur with Khalid al Mihdhar. In May 2001: a CIA official did not notify the FBI about Mihd-har's U.S. visa, Hazmi's U.S. travel, or Khallad's having attended the Kuala Lumpur meeting. In June 2001: FBI and CIA officials did not ensure that all relevant information regarding the Kuala Lumpur meeting was shared with the Cole investigators at the June 11 meeting. In August 2001: the FBI did not recognize the significance of the information regarding Mihdhar and Hazmi's possible arrival in the United States and thus did not take adequate action to share information, assign resources, and give sufficient priority to the search. Also in August 2001: FBI headquarters did not recognize the significance of the information regarding Moussaoui's training and beliefs and thus did not take adequate action to share information.

Along with the 9/11 attacks, the growth of transnational threats against the United States has increased the need for intelligence and law enforcement agencies to cooperate and share intelligence and law enforcement information. Executive Order 12333 (1981) states: "Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and

persons and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available."

Section 895 of the USA PATRIOT Act was an effort to allow sharing of grand jury information in limited circumstanes. It was subsequently affected by a rule change by the Supreme Court. According to the Historical Notes of the Federal Criminal Code and Rules on page 51, "Section 895 of Pub. L. No. 107–296, which purported to amend subdivision (e) of this rule, failed to take into account the amendment of this rule by Order of the Supreme Court of the United States dated April 29, 2002, effective December 1, 2002, and was therefore incapable of execution." This section makes the technical changes to address the rule change and ensure that the intent of Congress is carried through to improve information sharing.

Section 2192. Interoperable Law Enforcement and Intelligence Data System

The Commission Report described both the immensity of government information, but also how the U.S. government has a weak system for processing and using what it has. In no place is there greater resistance to information sharing and to any kind of interconnectivity among data systems than within the Intelligence Community. For example, the Report states that "undistributed NSA information * * * would have helped identify Nawaf al Hazmi in January 2000." (See Commission Report at 417) The problem is that, three years later, the intelligence agencies stubbornly maintain the set of parallel information system smokestacks that have existed for decades.

The Commission also proposed that "information be shared horizontally, across new networks that transcend individual agencies, "and explained that the "current system is structured on an old mainframe, or hub-and-spoke, concept. In this older approach, each agency has its own database. Agency users send information to the database and then can retrieve it from the database." (See Commission Report at 418) It proposed instead a "decentralized network model," the concept behind much of the information revolution also shares data horizontally. Agencies would still have their own databases, but those databases would be searchable across agency lines. In this system, secrets are protected through the design of the network and an 'information rights management' approach that controls access to the data, not access to the whole network". (See Commission Report at 418) The Commission recommended that "The president should lead the government-wide effort to bring the major national security institutions into the information revolution * * * [he] should coordinate the resolution of the legal, policy, and technical issues across agencies to create a "trusted information network." (See Commission Report at 418)

Section 2192 provides a clear direction to the NID to end that approach and clear deadlines for accomplishing a horizontal system. It takes a system that Congress already authorized for the successors to the INS in the Enhanced Border Security Act of 2001—which has not been implemented—and moves it to the National Intelligence Center. Specifically, this provision establishes require-

ments for the NID to establish an interim system for horizontal information exchange within the intelligence community to become operational immediately. This is to be followed by a fully functional interoperable system to "truly" establish interoperable data and information exchange within a trusted information network by 2007. Due to the complexity of this endeavor, as well as the urgency for completion of both the interim system and the full system, a special authority is granted to hire people capable of establishing both systems. Requirements for the systems align with the Commission's recommended "need to share" intelligence with intelligence officers, law enforcement and operational counterterror personnel, consular officers, and DHS border security officers.

Section 2193. The Improvement of Intelligence Capabilities of the Federal Bureau of Investigation

This section codifies the recommendations of the Commission as they relate to the FBI's intelligence capabilities. These recommendations are largely reforms that have already been implemented, or are about to be implemented, at the FBI. In its Report, the Commission recommends that the FBI's shift to preventing terrorism must survive the tenure of the current Director. This section avoids past shortcomings by the Bureau in its efforts to transform itself to address transnational security concern.

TITLE III—BORDER SECURITY AND TERRORIST TRAVEL

Subtitle A. Immigration Reform in the National Interest

Section 3001. Verification of Returning Citizens

Regulations implementing the Immigration and Nationality Act ("INA") allow U.S. citizens to reenter the U.S. from countries in the Western Hemisphere (other than Cuba) without passports.[22] The risks of this so-called "Western Hemisphere exception" have become all too obvious. A May 2003 hearing by the Subcommittee on Immigration, Border Security, and Claims examined D.C. sniper John Muhammad's smuggling activities between the Caribbean and the United States and revealed significant weaknesses in the admission process resulting from the exception. Muhammad was able to make his living by providing false American identification documents such as driver's licenses and birth certificates to aliens seeking to impersonate U.S. citizens and get through U.S. ports-of-entry. The GAO performed two investigations of this process, one for the Senate Finance Committee in January 2003, and another for the Immigration Subcommittee in May 2003.[23] In January, GAO agents crossed into the U.S. by presenting counterfeit state identification documents with false names (or no documents at all) from Canada, Mexico, and Jamaica. After briefing DHS on what it had done, and using the same documents, inspectors re-entered from Barbados unimpeded in May.

It is no wonder that the Commission found that "Americans should not be exempt from carrying biometric passports or other-

[22] See § 215(b) of the INA.

[23] See John Allen Muhammad, Document Fraud, and the Western Hemisphere Passport Exception: Hearing Before the Subcomm. On Immigration, Border Security and Claims of the House Comm. on the Judiciary, 108th Cong., at 31 (testimony of Robert Cramer, Managing Director, Office of Special Investigations, U.S. General Accounting Office)(2003).

wise enabling their identities to be securely verified when they enter the United States * * * ."[24] Section 3001 would require that by October 2006, all U.S. citizens returning from Western Hemisphere countries other than Canada and Mexico must present U.S. passports. In the interim, U.S. citizens would have to present a document designated by the Secretary of DHS. For U.S. citizens returning from Canada and Mexico, the Secretary of DHS would have to designate documents that are sufficiently secure.

Section 3002. Documents Required by Aliens from Contiguous Countries

Foreign visitors usually need passports or U.S. visas or border crossing cards to enter the U.S. However, the INA allows the Administration to waive this requirement for nationals of contiguous countries—which it has done for Canadians.[25] Therefore, U.S. inspectors at northern ports-of-entry can allow persons identifying themselves as Canadians and not looking "suspicious" to enter the U.S. without having to show any documents whatsoever. Non-Canadians entering the U.S. without any documents by claiming to be Canadian and Canadians on terrorist watchlists not being identified at the border because they do not have to provide documents are obvious security concerns.

There have been a disturbing number of cases of terrorists trying to enter the U.S. from Canada. Most notoriously, on December 14, 1999, the U.S. Customs Service arrested Algerian Ahmed Ressam at Port Angeles, Washington. Ressam was on his way to carry out the "Millenium Plot" and detonate a bomb at Los Angeles's international airport. He was found with nitroglycerin and other bomb-making equipment in his car. A former counter-terrorism chief for the CIA stated that his interception was "pure luck."

The National Post of Canada reported in June 2002 that:

> New allegations that a man behind the deadly bombing of a Tunisian synagogue belonged to a Montreal-based al-Qaeda cell show that Canada must do more to combat violent extremists, critics charged. * * * Nizar Ben Muhammed Nasr Nawar, 24, was under surveillance by Canadian intelligence agents for weeks but managed to slip away to his native country and set off a bomb that killed 19 people, including 12 German tourists. There is no word on whether Nawar, who told his family he was going to study at a Montreal school for travel agents, was part of a wave of 1,300 young Tunisian men who came to Canada in 1999 and 2000 on a student exchange. More than 100 of them have since disappeared without a trace.[26]

Unfortunately, it has been clear for some time that Canadian immigration policy poses a risk to U.S. national security. The Boston Globe reported in February 2002 that:

> [Canada] has emerged as an important fund-raising and staging ground for Al Qaeda soldiers. * * * For Al Qaeda, the Canadian center of choice is Montreal * * * although

[24] Commission Report at 388.
[25] See INA § 212(d)(4)(B).
[26] Tom Blackwell, Bombing Link Brings Call for Crackdown: Synagogue Killer Slipped through Net While in Canada, National Post, June 10, 2002, at A4.

> terrorist plotters and long-term "sleepers" have also made nests in Toronto and Vancouver, the country's two other major urban areas, according to terrorist specialists and investigators. "Montreal is a world-class hub of Islamist terrorist activity," said David Harris, former chief of strategic planning at the Canadian Security and Intelligence Service, the nation's spy service. * * * Noting the city's proximity to the United States and its large Muslim population, into which an Islamic militant bent on concealment can easily blend, Harris * * * said: "For a group that thinks of the US as the Great Satan, what better staging city for reconnaissance and operations?" * * * [I]ntelligence officials, anti-terrorist agents, federal police, and diplomats confirmed in recent interviews and background briefings that Al Qaeda and other terrorist groups have a significant presence in Canada. * * * Of most concern is the strong possibility that undetected Al Qaeda sleeper cells exist in Canada, awaiting the signal to attack American targets. * * * [S]cores of suspected Al Qaeda loyalists * * * have exploited Canada's liberal immigration standards and notoriously lax refugee rules to establish safe havens in the country that * * * still offers the easiest international access to the United States. * * * [C]ritics say the Chretien government is ignoring the most basic reason why Canada has become a sanctuary for international terrorists—immigration policies that bring more than 250,000 new people a year into the country with very little screening and loose rules that allow even suspected terrorists to reside for years in the country (collecting welfare, national health benefits, and housing allowances) simply by claiming to be refugees.[27]

The 9/11 Commission found that "Americans should not be exempt from carrying biometric passports or otherwise enabling their identities to be securely verified when they enter the United States, *nor should Canadians or Mexicans*. * * *"[28] The bill would require that by the beginning of 2007, aliens claiming to be Canadian who seek to enter the U.S. must present a passport or other secure identification.

Section 3003. Strengthening the Border Patrol

The 9/11 Commission found that "[i]t is elemental to border security to know who is coming into the country. * * * We must * * * be able to monitor and respond to entrances between our ports of entry. * * * The challenge for national security in an age of terrorism is to prevent the * * * people who may pose overwhelming risks from entering * * * the U.S. undetected."[29] The Commission's staff report on "9/11 and Terrorist Travel" found that "[t]here

[27] Colin Nickerson, U.S. Wary of "Time Bombs" Waiting to Strike from North, Boston Globe, February 4, 2002, at A12.
[28] Commission Report at 388 (emphasis added).
[29] Id. at 383, 390.

is also evidence that terrorists used human smugglers to sneak across borders."[30]

The Commission and its staff were right. Because it is easy for aliens to illegally cross our borders, it is also relatively easy for terrorists to enter. Periodic reports of large numbers of Middle Eastern nationals crossing the southern border were verified by the recent release of Border Patrol data showing that from last October through this June, 44,614 non-Mexican aliens were caught trying to cross the northern or southern borders—including eight from Afghanistan, six from Algeria, 13 from Egypt, 20 from Indonesia, 10 from Iran, 55 from Israel, 122 from Pakistan, six from Saudi Arabia, six from Syria, 22 from Turkey, and two from Yemen. A South African woman alleged to be on a terrorist watch list recently indicated that she had crossed the border illegally from Mexico.

By the mid 1990s, our southwest border was in a state of crisis. The transit routes most heavily used for illegal aliens were in the San Diego corridor. It had become a sieve where illegal aliens from Mexico entered en masse and unhindered. The Border Patrol in El Paso, Texas, then developed "Operation Hold the Line" and placed agents directly on the border. This deterrent dramatically reduced illegal crossings, cutting crime in border communities and winning the praise of the public. The INS adopted the Hold-the-Line strategy in San Diego under the moniker of "Operation Gatekeeper", and it came to believe that Gatekeeper was one of its most successful border control initiatives ever, bringing law and order to the San Diego border.

Despite the successes of Hold-the-Line and Gatekeeper, overall illegal entries across our borders have not decreased because there are not enough agents to duplicate the strategy across the southwest border. Illegal aliens now resort to difficult but lightly patrolled routes across rugged terrain in California and Arizona. Professor Frank Bean of the University of Texas found that approximately 16,000 Border Patrol agents would be required to duplicate the Hold-the-Line strategy across the entire southwestern border. This is the number of agents America needs to control our southwestern border. Given the need to also bolster resources along the northern border, Border Patrol strength should optimally be at least doubled from its current level of about 11,000. The bill therefore authorizes an increase in the Border Patrol of 2,000 agents a year for each of the next five years.

Section 3004. Increase in Immigration Enforcement Investigators

The Commission's staff found repeatedly that the lack of enforcement of our immigration laws in the interior of the U.S. facilitated terrorism. The staff reported that "abuse of the immigration system and a lack of interior immigration enforcement were unwittingly working together to support terrorist activity."[31] Further, "[t]he first problem encountered by those concerned about terrorists was an almost complete lack of enforcement resources. [No one] ever provided the support needed for INS enforcement agents to find,

[30] 9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States at 59 (2004).
[31] Id. at 46.

detain, and remove illegal aliens, including those with terrorist associations."[32]

Even if we were to completely seal our borders, that would not be enough to control illegal immigration. Between one-third and one-half of the resident illegal alien population came to the U.S. legally on temporary visas and simply never left. Interior enforcement is a crucial component of immigration law enforcement. In addition to tracking down illegal aliens (including those who do make it past the border), interior investigators also play a crucial role in the location and deportation of criminal aliens and aliens who skip out on deportation orders. But the Commission's staff found that "[t]he budget for interior enforcement remained static in the face of an overwhelming number of immigrants outside the legal framework" and that "[t]he INS's difficulty in locating absconders is consistent with the difficulty generally faced [in locating] aliens inside our country."[33]

ICE only has about 2,000 investigators nationwide, a number that all agree is woefully inadequate to protect the borders against terrorist infiltration. Enforcement of employer sanctions has all but been abandoned. Arrests on job sites have declined from over 8,000 in 1992 to 451 in 2002, and final orders levying fines on employers for immigration law violations fell from over 1,000 in 1992 to 13 in 2002. Until we eliminate the "job magnet" we will never successfully control illegal immigration.

There are some 400,000 alien "absconders," aliens who have been ordered removed from the U.S. and who have ignored those orders and remained in the country. Of those, 80,000 have criminal records. Although ICE has deployed 18 Fugitive Operations teams to arrest those aliens, the teams cannot accomplish the task on their own. A recent report stated that the San Diego team "with more than 550 apprehensions ranks near the top of the 22 cities where Homeland Security agents have caught fugitives since October 2003." If each team were to arrest 600 aliens per year, it would take more than 37 years to apprehend the outstanding absconders, even if no other aliens were to evade removal. It would take more than seven years for these teams to arrest just the criminal absconders.

The bill would increase the number of ICE investigators enforcing our immigration laws by 800 a year for each of the next five years. One half of the new investigators would be dedicated to enforcing employer sanctions and removing illegal aliens from the workplace. Section 3005. Prevention of Improper Use of Foreign Identification Documents.

The Commission noted that "[i]n their travels, terrorists use * * * identity fraud."[34] It wrote that "[a] fundamental problem * * * is the lack of standardized information in 'feeder' documents used in identifying individuals [and that f]raud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are ter-

[32] Id. at 95.
[33] Id. at 143 and 156.
[34] 9/11 Commission Report at 384.

rorists."[35] The Commission went on to say that "[o]nce inside the country, [aliens] may seek another form of identification and try to enter a government or private facility."[36] It found that "today, a terrorist can defeat the link to electronic records by tossing away an old passport and slightly altering the name in the new one."[37] The staff of the Commission found that "[terrorists] relied on a wide variety of fraudulent documents * * *."[38]

Since early 2002, the Mexican government has been promoting its consular identification card, called the "matricula consular," for acceptance in the United States. Acceptance of the cards encourages illegal immigration to the United States. The only aliens in the U.S. who need additional identification documents, other than passports and U.S.-government issued documents, are those illegally here.

Also, as the then-Assistant Director of the FBI's Office of Intelligence, Steve McCraw, told the Immigration Subcommittee in June 2003, the matricula consular is vulnerable to fraud because the issuance standards are low, the Mexican government does not monitor the cards' issuance, and it is also vulnerable to forgery.[39] Mr. McCraw concluded that domestic acceptance of matricula cards in the United States poses a law enforcement and national security risk.[40] He stated that the criminal threat stems from the fact that matriculas "can be a perfect breeder document for establishing a false identity," which can facilitate a wide range of crimes, including money laundering.[41] He told of individuals who were arrested with multiple matriculas, each with the same photo but different names, some of whom had matching driver's licenses.[42] He concluded that the terrorist threat posed by these cards that is the "most worrisome" to the FBI: "[t]he ability of foreign nationals to use [consular cards] to create a well-documented, but fictitious, identity in the United States provides an opportunity for terrorists to move freely within the United States without triggering name-based watch lists that are disseminated to local police officers."[43] Nor is the danger posed by those documents only as "breeder documents" for other documentation—notwithstanding their vulnerability to fraud and abuse, consular ID cards can be presented to board an airliner.

The bill would bar all federal employees from accepting identification cards presented by aliens other than a document issued by the Attorney General or the Secretary of Homeland Security under the authority of the immigration laws, or an unexpired foreign passport. Section 3006. Expedited Removal for Illegal Aliens.

By the mid-1990s, tens of thousands of aliens were arriving at U.S. airports each year without valid documents and making meritless asylum claims, knowing that they would be released into the community pending asylum hearings because of a lack of detention space. Few were ever heard from again. In response, the Ille-

[35] Id. at 386, 390.
[36] Id. at 385.
[37] Id. at 389.
[38] 9/11 and Terrorist Travel at 46.
[39] See Consular Identification Cards: Hearing Before the Subcomm. On Immigration, Border Security and Claims of the House Comm. on the Judiciary, 108th Cong., at 109–12 (2003).
[40] Id. at 112.
[41] Id. at 111.
[42] Id.
[43] Id. at 112.

gal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") created the mechanism of "expedited removal."[44] Under expedited removal, a DHS officer at a port-of-entry can immediately return an alien lacking proper documents to the country of origin unless the alien asks for asylum and can establish a "credible fear" of persecution. By fiscal year 2003, the INS was making over 43,000 expedited removals per year and our airports were no longer being deluged.

IIRIRA provided the Administration with the authority to use expedited removal in the case of any alien who had entered the U.S. illegally and had not been present here for two years.[45] Until recently, the INS and DHS never made use of this power, a fact that amazed the staff of the 9/11 Commission. The staff stated that:

> Despite th[e success of expedited removal at our airports], the INS never expanded expedited removal to include persons attempting to enter illegally across the expansive physical borders between ports of entry. As a result, it was not used against Gazi Ibrahim Abu Mezer, who was able to stay in the United States despite being apprehended three times for illegal entries along the Canadian border. He later became known as the "Brooklyn Bomber" for his plan to blow up the Atlantic Avenue subway in Brooklyn.[46]

Recently, the Administration has taken a tentative step towards using expedited removal along the southern border because of the large numbers of non-Mexican aliens who have been caught by the Border Patrol and then released into the United States because of a lack of detention space.

Aliens who have crossed the border illegally should be subject to expedited exclusion. These aliens, if they have been in the U.S. less than ten years, have no right to seek cancellation of removal. Unless they are making a claim of asylum and can show a credible fear of persecution, there is no reason not to subject them to expedited removal. Otherwise, the present "revolving door" will continue to spin. We will catch illegal aliens and promptly release them, hoping they will appear for their immigration court hearing months hence. DOJ's Inspector General found that the INS was only able to remove 13% of nondetained aliens with final orders of removal, and only 6% of nondetained aliens from state sponsors of terrorism who had final removal orders.[47]

The bill would require DHS to use expedited removal in the case of all aliens who have entered the U.S. illegally and have not been present here for five years. Given changes to the INA that Congress made in 1996 that amended the entry doctrine and ended the distinctions between exclusion and deportation hearings, it is questionable whether aliens who entered illegally would have any due process rights beyond the minimal rights of an arriving alien seeking admission to the U.S. Assuming that those aliens do, however, the procedures specified in section 3006 would satisfy due process.

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[44] See INA 235(b).
[45] See INA 235(b)(1)(A)(iii).
[46] 9/11 and Terrorist Travel at 97 (footnotes omitted).
[47] U.S. Department of Justice Office of the Inspector General, Evaluation and Inspections Division, The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders (I–2003–004) at i, ii (2003).

That these procedures do not require immigration court consideration does not violate due process, nor do they necessarily make the risk of an erroneous deprivation of removal any more likely than would immigration court procedures.

In evaluating whether procedures in any case satisfy due process, the court must consider the interest at stake for the alien, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedures.[48] The aliens affected by this section have an interest in not being removed. Those aliens' interests are limited, however, by the paucity of their ties to the United States. In particular, the only aliens who would be impacted by this provision are those who have so few ties (and have been here less than five years) that they are entitled to no immigration benefits.

No precedent suggests that to satisfy due process, an alien must be placed into removal proceedings before an immigration judge under §240 of the INA, as opposed to having the opportunity to explain to an immigration officer within DHS that he or she is not inadmissible under one of the grounds for expedited removal. As the Supreme Court held in one of the seminal cases in immigration law:

> This court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends—*not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act.*[49]

In fact, until the (regulatory) creation of the Executive Office for Immigration Review in 1983, immigration judges were a part of the former INS, the agency charged with the alien's removal. In implementing the expedited removal provisions in IIRIRA, INS recognized the interests of aliens facing removal, and drafted its procedures to protect those interests.[50] Those procedures effectively ensure that aliens are not erroneously removed thereunder: "All officers should be especially careful to exercise objectivity and professionalism when refusing admission to aliens under this [expedited removal] provision. Because of the sensitivity of the program and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved * * *. Since a removal order under this process is subject

[48] See *Landon* v. *Plascencia,* 459 U.S. 21, 34 (1982).
[49] *Yamatayo* v. *Fisher,* 189 U.S. 86, 100–01 (1903) (emphasis added).
[50] See generally *AILA* v. *Reno,* 18 F. Supp.2d 38, 43–44 (D.D.C. 1998).

to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her. * * * All officers should be aware of precedent decisions and policies relating to the relevant grounds of inadmissibility. * * * [I]t is important that * * * any expedited removal be justifiable and non-arbitrary.[51] The Committee believes that the procedures adopted under this provision will have similar protections.[52]

The government's interest in the efficient enforcement of the immigration laws, on the other hand, is weighty, particularly given the findings of the Commission and its report. As the Commission found: "had the immigration system set a higher bar for determining whether individuals are who or what they claim to be—and ensuring routine consequences for violations—it could potentially have excluded, removed, or come into further contact with several hijackers who did not appear to meet the terms for admitting short-term visitors."[53] Further, as the Supreme Court has found, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature."[54] Given these facts, the procedures described in the bill satisfy the due process for aliens who entered the U.S. illegally (such aliens having extremely limited due process rights). Section 3007. Limit Asylum Abuse by Terrorists.

Terrorists are not supposed to receive asylum,[55] but many have tried. The Commission's staff report on "9/11 and Terrorist Travel" found that "a number of terrorists * * * abused the asylum system"[56] and that "[o]nce terrorists had entered the U.S., their next challenges was to find a way to remain here. Their primary method was immigration fraud * * * [concoct]ing bogus political asylum stories when they arrived * * *."[57]

Unfortunately, examples abound. In 1993, Mir Aimal Kansi murdered two CIA employees at CIA headquarters and Ramzi Yousef masterminded the first World Trade Center attack while free after applying for asylum. In the same year, Sheik Umar Abd ar-Rahman plotted to bomb New York City landmarks after he applied for asylum. Just weeks ago, Shahawar Matin Siraj was arrested in New York City for plotting to bomb a subway station. Siraj was free after applying for asylum.

Asylum fraud is endemic. The staff of the 9/11 Commission found that "the asylum system did not detect or deter fraudulent applicants."[58] "Snakeheads" and other alien smugglers have succeeded in providing the aliens they are smuggling into the U.S. with extensive coaching and "cheat sheets" on what claims to make to get asylum. Successful ploys are quickly duplicated. The Commission

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[51] Id. at 43 (quoting the INS Inspector's Field Manual, ch. 17.15(a), (b)).

[52] The alien's rights in expedited removal would be further protected by the alien's access to seek review in habeas proceedings. See INA § 242(e).

[53] Commission Rewport at 384; see also id. at 390 ("It is elemental to bordere security to know who is coming into our country. We must also be able to * * * respond to entrances between our ports of entry.").

[54] *Plascencia,* 459 U.S. at 34.

[55] See INA § 208(b)(2)(A)(v).

[56] 9/11 and Terrorist Travel at 99.

[57] Id. at 47.

[58] Id. at 86.

staff found that "the asylum system did not detect or deter fraudulent applicants."[59]

As a result, the number of aliens—mostly illegal aliens seeking any way to avoid deportation—who have applied for and have been granted asylum has skyrocketed in recent years. From 1990 to 2003, the number of aliens granted asylum by asylum officers has increased by 173% and the number of aliens granted asylum by immigration judges increased by 377%. The percentage of cases approved by asylum officers has increased by 93%, and the percentage approved by immigration judges has increased by 61%. When both asylum officers and immigration judges are taken into account, well over half of all asylum applications are now being approved. The total number of aliens granted asylum hit almost 37,000 in 2002 and almost 29,000 in 2003, a 240 percent increase from 1990 to 2003.

Ninth Circuit precedent makes it difficult for immigration judges to deny fraudulent asylum applications by terrorists or simply by scam artists. In recent decisions, the Ninth Circuit has failed to give deference to the adverse credibility determinations of immigration judges in asylum cases. It is well accepted that the initial trier of fact is in the best position to assess the credibility of a witness who appears before him. The Supreme Court has held that "[t]o reverse the BIA finding, [the reviewing court] must find that the evidence not only supports the conclusion, but compels it."[60] Despite these rules, however, the Ninth Circuit has adopted a body of circuit law that relieves the applicant of his burden of proof in asylum cases and allows the court to substitute its own views about contested record evidence for reasonable determinations of immigration judges or the BIA: "the majority resolves every ambiguity in favor of [the asylum applicant], whereas [the correct] standard of review requires us to resolve every ambiguity in favor of the decision-maker below."[61]

The court essentially prevents immigration judges from making adverse credibility determinations by limiting to the point of a nullity the factors (such as inconsistencies and demeanor observations) that the immigration judge can consider in finding an alien incredible.[62] For example, it has held that an immigration judge could not take into account, when determining whether an alien's allegations of police beatings were credible, the alien's inconsistent testimony about when and where he was beaten.[63] It has ruled that the BIA could not draw inferences from the "'disjointed[ness] and "incoherence'" of the applicant's testimony, speculating that those features of the testimony "were possibly the result of mistranslation or miscommunication."[64] It ignores the rule that "[i]f a witness lies on any point, now matter how irrelevant it may at first appear * * * the witness's credibility is tenuous at best, and the entire

[59] Id.

[60] *INS* v. *Elias-Zacarias,* 502 U.S. 478, 481 n.1 (1992).

[61] *Cardenas* v. *INS,* No. 01–70557, 2002 WL 1286076, at *6 (9th Cir. June 12, 2002) (Graber, J. dissenting).

[62] See e.g., *Singh* v. *INS,* 292 F.3d 1017 (9th Cir. 2002); *Bandari* v. *INS,* 227 F.3d 1160 (9th Cir. 2000); *Shah* v. *INS,* 220 F.3d 1062 (9th Cir. 2000); *Abovian* v. *INS,* 219 F.3d 972 (9th Cir. 2000), reh'g denied, 257 F.3d 971 (9th Cir. 2001).

[63] See *Bandari,* 227 F.3d at 1165–66.

[64] See *Abovian,* 219 F.3d at 979 (quoting *Akinmade* v. *INS,* 196 F.3d 951, 956 (9th Cir. 1999) (internal quotation marks omitted)).

testimony can be discredited."[65] It ruled that an applicant's failure to mention family-planning issues in his 1995 asylum application, and his statement in 1995 that he was unmarried, failed to cast doubt upon respondent's testimony in the second asylum proceeding that he was married and his wife was pregnant when he fled China in 1995, and that he fled because he was being pursued by family-planning officials.[66] It treats each inconsistency or gap in an applicants evidence as an isolated defect, rather than considering them cumulatively.[67]

Other Courts of Appeals adhere to more reasonable rules, for example that an asylum applicant has to provide "convincing reasons" for inconsistency in his evidence,[68] that the court should review the collective significance of inconsistencies,[69] and that an asylum applicant's not remembering the details of his father's kidnaping was "the very stuff of legitimate impeachment."[70] Given that government attorneys are barred from asking the foreign government about the facts regarding the asylum claimants,[71] about the only evidence available to the government on which to deny an asylum application is the perceived credibility of the applicant. If a criminal jury can sentence a criminal defendant to life imprisonment or execution based on adverse credibility determinations, certainly an immigration judge can deny an alien asylum on this basis.

In 1988, the Ninth Circuit created a disturbing precedent that has made it easier for suspected terrorists to apply for and receive asylum. It held that punishment inflicted on account of perceived membership in an armed group may constitute persecution on account of the political opinion of that armed group, a doctrine known as "imputed political opinion."[72] Thus, aliens who have been arrested in the United States for suspicion of affiliation with terrorist organizations argue that the foreign government believes that they are members of a terrorist organization. Some have received asylum because of a fear of persecution if returned because of an affiliation with these groups.[73] Of course, the court has to rule that the foreign government "mistakenly" believes the asylum applicant is a terrorist because terrorists are barred from receiving asylum. As a member of the Board of Immigration Appeals has found:

> It would appear that the Ninth Circuit holds the entirely novel view that the violent overthrow of a democratically elected government is a "political opinion" like any other and that no government may object to its expression. If a guerilla organization arose in this country aimed at the violent overthrow of the Federal Government through a program of murder of government and law enforcement officials and federal judges, it would appear that governmental suppression of this organization would be an act of persecution in the Ninth Circuit. After all, if that court

[65] See, e.g., Jeffrey Kestler, Questioning Techniques and Tactics § 1.22 (3d ed. 1999).
[66] See *INS* v. *Yi Quan Chen,* 266 F.3d 1094 (9th Cir. 2001).
[67] See id.
[68] See *Mansour* v. *INS,* 230 F.3d 902, 906 (7th Cir. 2000).
[69] See *Chun* v. *INS,* 40 F.3d 76, 78–79 (5th Cir. 1994).
[70] See *Bojorques-Villanueva* v. *INS,* 194 F.3d 14, 17 (1st Cir. 1999).
[71] See 8 C.F.R. § 208.6.
[72] See *Blanco-Lopez* v. *INS,* 858 F. 2d 531 (9th Cir. 1988).
[73] See, e.g., *Singh* v. *Ilchert,* 63 F. 3d 1501 (9th Cir. 1995).

> could find that [a government] "persecuted [the asylum applicant] because it believed him to be a guerrilla," then it is clear that "being" a guerrilla is somehow a form of "political opinion," regardless of the actual objectives of the guerrillas and their methods. If this is so, then that court could not logically object to the murder of federal judges by "guerrillas" who are only acting out their "political opinion," whether it be a form of Marxism or "Aryan supremacy" * * * [I]f * * * "being" a guerrilla is the acting out of a political opinions that policemen should be killed * * * then so is the view that Jews should be killed because they are believed to control the world, or that federal judges should be murdered because they are considered an instrument of repression of Caucasian Christians. * * * "Being" a guerrilla is not a form of political opinion. "Being" a guerilla means being engaged in acts of violence and illegality. I know of no legal principle or form of logic that states that "being" engaged in such acts automatically transforms the "political opinions" that drive those acts into a form of political opinions protected by United States law. * * * One faces the remarkable possibility under [the Ninth Circuit doctrine] that the more egregious the act and the greater the outrage, the higher the probability of being granted asylum, on the ground that claimed police mistreatment will be on "account of political opinion," not human failings, vengeance, or anger provoked by the extremist's acts.[74]

This section would overturn this precedent of the Ninth Circuit. It would reassert that the burden of proof in an asylum case is on the applicant and that the testimony of the applicant may be sufficient to sustain such burden without corroboration, but only if it is credible, is persuasive, and refers to specific facts that demonstrate that the applicant is a refugee. Where it is reasonable that an applicant would present corroborating evidence, such evidence must be provided unless a reasonable explanation is given as to why such information is not provided. No court shall reverse a determination made by an immigration judge or BIA with respect to the availability of corroborating evidence unless the court finds that a reasonable adjudicator is compelled to conclude that such corroborating evidence is unavailable.

This section also provides a non-exhaustive list of factors that an immigration judge can consider in assessing credibility, such as the demeanor, candor, or responsiveness of the applicant or witness, the consistency between the applicant's or witness's written and oral statements, whether or not under oath, made at any time to any officer, agent, or employee of the United States, the internal consistency of each such statement, the consistency of such statements with the country conditions in the country from which the applicant claims asylum, as presented by the Department of State, and any inaccuracies or falsehoods in such statements. Finally, aliens who allege they will be persecuted because of terrorist ties will not longer be presumed to fear persecution on account of political opinion. Rather, the section requires such that such applicant

[74] Matter of R-, 20 I. & N. 621, 636–37 (1992) (M. Heilman, concurring).

establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be the central motive for their claimed persecution.

Section 3008. Revocation of Visas

The INA allows the State Department to revoke visas after they have been issued.[75] Revocation is problematic, however, when the alien has entered the U.S. by the time the visa has been revoked because there is no provision that allows DHS to remove an alien whose visa has been revoked. If DHS has information that establishes that the alien is otherwise removable (such as for a crime, or illness), it will place the alien in removal proceedings on those grounds. However, DHS bears the burden of proof in deportation proceedings, and if the agency cannot prove that the alien is deportable, it must allow the alien to remain until the alien's period of authorized admission ends.

This policy is a particular problem in terrorism cases because information linking an alien to terrorism is often classified, and classified information cannot be used to prove deportability. In October 2002, GAO reported that the State Department had revoked 105 visas that had been erroneously issued to aliens about whom there were questions about possible terror ties before their background checks had been completed. The GAO found that immigration agents did not attempt to track down those aliens whose visas had been revoked because of the difficulty in removing those aliens from the United States.[76] The bill would respond to this problem by allowing the government to deport a nonimmigrant alien whose visa has been revoked. The section will prevent an alien whose visa has been revoked to challenge the underlying revocation in court, where the government might again be placed in a position of either exposing its sources or permitting a potentially dangerous alien to remain in the U.S.

The bill also addresses a similar loophole that would prevent DHS from revoking a nonimmigrant visa petition that has been granted for an alien in the U.S., even before that alien has received the visa. Currently, DHS cannot revoke a petition even if it appears that the alien may not be eligible for the visa, even if the petition was fraudulent and submitted by an alien terrorist. The bill would delete archaic language that was added to the INA decades ago, when travel to the U.S. was long and laborious, and when adjustment of status, a legal fiction by which aliens in the U.S. are treated as if they had reentered in a new legal status, was rare.

Section 3009. Streamlined Removal Process

The staff of the 9/11 Commission wrote that:

> In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make con-

[75] See INA § 221(i).

[76] See U.S. General Accounting Office, Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process (GAO–03–798) at 5 (2003).

> tacts in the U.S., acquire necessary materials, and execute an attack [and that] immigration cases against suspected terrorists were often mired for years in bureaucratic struggles over alien rights and the adequacy of evidence.[77]

In 1996, Congress attempted to streamline the judicial review of immigration orders entered against aliens who have committed serious crimes in the U.S. IIRIRA sought to eliminate judicial review of immigration orders for most criminals, recognizing that criminal aliens had received a full measure of due process in their criminal cases and immigration proceedings, and that additional review typically only delayed their inevitable removal as criminals were statutorily barred from most forms of immigration relief.[78] IIRIRA also limited the judicial review of discretionary relief issues for all aliens, on the basis that the law committed such matters to the judgment of the Attorney General.

Because the 1996 reforms lacked express language precluding district court review, however, the Supreme Court has read the provision to give aliens judicial review possibilities other than, or in addition to, the review[79] specified in the immigration laws. As Justice Scalia stated in dissent:

> The Court has therefore succeeded in perverting a statutory scheme designed to expedite the removal of criminal aliens into one that now affords them more opportunities for (and layers of) judicial review (and hence more opportunities for delay) than are afforded non-criminal aliens—and more than were afforded criminal aliens prior to the enactment of IIRIRA. This outcome speaks for itself; no Congress ever imagined it.[80]

The result of this judicial activism has been a dramatic increase in the volume of immigration cases filed in the federal courts and continued delay and inefficiency in securing final judgment in immigration matters.

Consistent with the settled principle that petitions for review should be the "sole and exclusive" means of judicial review for aliens challenging their removal, the bill streamlines immigration review while protecting an alien's right to review by an independent judiciary. For criminal aliens and aliens who are not permanent residents, review would be only in the circuit court and the scope of review would be limited to: (1) whether the individual is an alien; (2) whether he is deportable under the INA; (3) whether he was ordered removed under the INA; and (4) whether he meets the criteria for withholding of removal or Torture Convention protection. For non-criminal lawful permanent resident aliens, review would be only in the circuit court and would be available for all non-discretionary determinations. This assures that every alien may obtain review of his or her final order of removal in the courts of appeals. Under this provision, criminal aliens would have the opportunity for circuit court review of constitutional claims and pure questions of law. These provisions are fully consistent with both the Supreme Court's decision in St. Cyr and settled jurisprudence

[77] 9/11 and Terrorist Travel at 98, 143.
[78] See §306 of Pub L. No. 104–208.
[79] See *INS* v. *St. Cyr,* 533 U.S. 289 (2001).
[80] Id. at 335 (Scalia, J., dissenting).

regarding the availability of habeas corpus. These reforms will ensure that aliens will have a day in court, but that criminals will not be able to delay their lawful removal from the United States.

Sections 3031–32. No Bar to Removal for Terrorists and Criminal Aliens

Legislation implementing the Convention Against Torture was enacted in 1998.[81] The Convention ensures that human rights violators and others engaged in torture are brought to justice and details the process for extradition, detention, criminal prosecution, and victim compensation. The Convention also prohibits the return of an alien to a country where there are substantial grounds for believing that he or she would be in danger of being tortured. When the Senate passed the implementing legislation, it stated that "to the maximum extent consistent with the obligations of the United States under the Convention * * * the [INS] regulations * * * shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act." What kinds of aliens are so described? Aliens who have engaged in Nazi persecution or genocide, aliens who have engaged in terrorist activity, aliens who have been convicted of particularly serious crimes and are thus a danger to the community of the U.S., aliens who committed serious crimes outside the U.S., and aliens who there are reasonable grounds to believe are a danger to the security of the U.S. This makes perfect sense. After all, the same aliens are barred under the INA from receiving asylum.[82] The Justice Department, however, clearly disobeyed Congress's instructions in writing the regulations creating relief from deportation under the Convention.[83] The regulations did not exclude such dangerous individuals from relief from deportation.

The Immigration Subcommittee conducted a hearing in July 2003 on the effect of the INS regulations.[84] From March 1999 through August 2002, immigration judges granted hundreds of criminal aliens relief from deportation under the Convention.[85] This included two murderers that we know of, one who killed a spectator at a Gambian soccer game and one who was implicated in a mob-related quintuple homicide in Uzbekistan.

The danger posed by the requirement that these aliens be allowed to remain in the U.S. was increased exponentially by the 2001 Supreme Court decision of *Zadvydas* v. *Davis,*[86] in which the Court made clear that it would strike down as unconstitutional the indefinite detention by DHS of aliens with removal orders whose countries will not take them back, except in the most narrow of circumstances.[87] Based on this decision, DOJ decided that it had no

[81] See the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105–277, div. G., § 2242 (1998).

[82] See INA § 208(b)(2).

[83] See 8 C.F.R. § 208.16–18.

[84] See Immigration Relief Under the Convention Against Torture for Serious Criminals and Human Rights Violators: Hearing Before the Subcomm. On Immigration, Border Security and Claims of the House Comm. on the Judiciary, 108th Cong. (2003).

[85] See letter from William E. Moschella, Assistant Attorney General, U.S. Department of Justice, to Chairman F. James Sensenbrenner, Jr. (July 7, 2003).

[86] 533 U.S. 678 (2001).

[87] "We have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals * * *. Neither do we consider terrorism or other special circumstances where special arguments *might* be made for forms of preventive detention and for

Continued

choice but to release back onto the streets those criminal aliens who had received protection under the Convention. By the time of the hearing in July of 2003, approximately 500 criminal aliens who had received relief under the Convention had been released into American communities[88]—including the murderer from Uzbekistan. The Gambian murderer might also have been released, but he decided to return home to Gambia voluntarily.

The Committee discovered at the hearing that even a Nazi war criminal had sought to avoid deportation through the Convention.[89] Terrorists have received relief from removal under the Convention Against Torture, including an alien involved in the assassination of Anwar Sadat.[90] Days ago, a suspected al Qaeda operative made claim under the Convention to forestall deportation.[91] Osama Bin Laden himself could probably frustrate deportation by making a Convention claim—since the more heinous a person's actions, the more likely that he might be subject to torture in his home country.

The bill would make the Convention regulations adhere to the intent of Congress. 1Aliens who have engaged in Nazi persecution or genocide, terrorist aliens, aliens who have been convicted of particularly serious crimes and are thus a danger to the community of the U.S., aliens who committed serious crimes outside the U.S., and aliens for whom there are reasonable grounds to believe are a danger to the security of the U.S. would not be allowed to frustrate their deportations and be released onto the streets of our communities.

Section 3033. Removal of Aliens

At the present time, an arriving alien turned back at the border is removed to the country from which he came to the U.S., or to his country of citizenship or nationality.[92] Aliens deported after admission are allowed to designate a country of removal, but the Attorney General can disregard the designation if that country refuses to accept the alien or if removal would be prejudicial to the U.S.

The current removal provisions have been used by certain aliens to block DHS from removing them to countries that have no governments to formally accept them. In particular, DHS is prevented by court order from sending aliens back to Somalia.[93] Under the court's ruling, DHS may not remove any criminal alien back to Somalia, regardless of the severity of the offense or the danger that the alien poses. More importantly, however, DHS cannot remove any terrorist aliens to that country. In December 2001, Secretary of State Colin Powell stated that "some bin Laden followers are holed up [in Somalia], taking advantage of the absence of a functioning government," and Joint Chiefs Chairman Richard Myers also stated that month that the U.S. has "strong indications Soma-

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heightened deference to the judgments of the political branches with respect to matters of national security." Id. at 690–91, 696 (emphasis added).

[88] See Immigration Relief Under the Convention Against Torture at 2 (statement of John Hostettler, Chairman of the Subcommittee on Immigration, Border Security and Claims).

[89] See id. at 15 (statement of Eli Rosenbaum, Director, Office of Special Investigations, U.S. Department of Justice).

[90] See *Soliman* v. *U.S.,* 296 F. 3d 1237 (11th Cir. 2002).

[91] See Stephen Dyer, Inmate Fights to Stay in U.S., York Beacon Journal, Sept. 22, 2004.

[92] See INA § 241.

[93] See e.g., *Ali* v. *Ashcroft,* 346 F. 3d 873 (9th Cir. 2003).

lia is linked to Osama Bin Laden."[94] A further indication of the terror threat posed by Somalia is that Al-Ittihad, which President Bush named in his September 23, 2001, executive order blocking property of, and prohibiting transactions with, terrorist groups, operates in the country.[95] Moreover, a rule that aliens cannot be returned to countries that have no government to accept them will encourage illegal immigration from those countries, and will encourage other aliens to fraudulently say that they are nationals of one of those countries, to avoid removal.

The section would move the authority for designating a country of removal to the Secretary of DHS, and give the Secretary more power to remove an alien to a specific country. It would also allow the Secretary to remove an alien to a country of which the alien is a citizen or national unless the country prevents the alien from entering. This would give the Secretary the flexibility not to return an alien to a place where the alien would be free to engage in terrorist activities.

Section 3041. Bringing in and Harboring Certain Aliens

The Commission staff reported "[t]here is also evidence that terrorists used human smugglers to sneak across borders."[96] The bill would increase criminal penalties for alien smuggling and require the Secretary of DHS to develop and implement an outreach program to educate the public in the U.S. and abroad about the penalties for illegally bringing in and harboring aliens.

Section 3081. Studies on Worldwide Machine-Readable Passports and Worldwide Travel History Database

The Commission recommended that "[t]he Department of Homeland Security, properly supported by the Congress, should complete, as quickly as possible a biometric entry-exit screening system, including a single system for speeding qualified travelers."[97]

This section requires the Department of State's Office of Visa and Passport Control and the GAO each to conduct a study on the feasibility, cost, and benefits of: (1) requiring all passports to be machine-readable, tamper-resistant and with biometric identifiers; and (2) the creation of a database containing a record of all entry and exit information so that border and consular officials may ascertain the travel history of the visitor or a prospective entrant. This requirement would allow consular officers and immigration inspectors to ascertain the travel history of any U.S. citizen or foreign visitor seeking to enter the U.S., even if that entrant has a new passport.

Section 3082. Expanded Pre-inspection at Foreign Airports

In addition to recommending that DHS complete a biometric entry-exit screening system, the Commission stated that:

> The U.S. government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other govern-

[94] Ted Dagne, Congressional Research Service Report for Congress: Africa and the War on Terrorism at 13 (2002).
[95] See id.
[96] 9/11 and Terrorist Travel at 59.
[97] 9/11 Commission Report at 389.

> ments. We should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation.[98]

Currently, DHS inspects passengers who are traveling to the U.S. at 14 foreign airports instead of inspecting them at ports of entry in the U.S. The bill would expand this program to include up to an additional 25 airports. In addition, the current selection criteria for pre-inspection locations are based on reducing the number of aliens who arrive to the U.S. who are inadmissible. Section 3082 states that the selection criteria should also include the objective of preventing the entry of potential terrorists. The additional locations should be operational by January 1, 2008.

Section 3083. Immigration Security Initiative

The Immigration Security Initiative is a DHS operated program that assists airline personnel at foreign airports in identifying fraudulent travel documents. The program's objective is to identify passengers, including potential terrorists, who seek to enter the U.S. using fraudulent documents, prior to these passengers being allowed to board flights for the U.S. Currently, the program is in place in only two foreign airports. This section expands the program to at least 50 foreign airports by December 31, 2006.

Section 3084. Responsibilities and Functions of Consular Officers

This section improves the operation of U.S. consular offices in preventing the entry of terrorists. First, it increases the number of consular officers by 150 per year for fiscal years 2006 through 2009. Second, it places limitations on the use of foreign nationals to screen nonimmigrant visa applicants by stating that all applications shall be reviewed and adjudicated by a U.S. consular officer. Third, it requires that the training program for consular officers include training in detecting fraudulent documents and working directly with DHS immigration inspectors at ports of entry. This requirement is needed because consular officers currently do not train directly with immigration inspectors to learn all of the elements of our screening system as part of their training regimen. Lastly, this section requires the Secretary of State to place anti-fraud specialists in the one hundred posts that have the greatest frequency of presentation of fraudulent documents.

Section 3085. Increase in Penalties for Fraud and Related Activity

This section amends 18 U.S.C. § 1028 to increase penalties for the possession and transfer of fraudulent government identification documents, including fraudulent U.S., state, and foreign government documents. The Commission recommended: "The Department of Homeland Security, properly supported by the Congress, should complete, as quickly as possible a biometric entry-exit screening system, including a single system for speeding qualified travelers." Commission Report at 389. "The U.S. government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other govern-

[98] Id. at 390.

ments. We should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation" Id. at 390.

Section 3086. Criminal Penalty for False Claim to Citizenship

This section would make it a violation of law to make a false claim of citizenship in order to enter or remain in the United States. This also follows the Commission's recommendation regarding a biometric entry-exit screening system.

Section 3090. Biometric Entry and Exit Data System

As noted above, the Commission recommended a biometric entry-exit screening system."[99] This section calls on the Secretary of DHS to develop a plan to accelerate the full implementation of the requirement of an automated entry and exit data system at U.S. ports of entry. The section also calls for the Secretary of DHS to implement a plan to expedite the processing of registered travelers at ports of entry.

TITLE V—GOVERNMENT RESTRUCTURING

Sections 5001–5010. Faster and Smarter Funding for First Responders

This section implements the Commission's recommendations regarding first responder funding. Specifically, §§ 5001–10 fully incorporate H.R. 3266, the "Faster and Smarter Funding for First Responders Act," which follows the Commission's recommendations concerning the delivery of Federal homeland security assistance to state and local governments. The Commission recommended that: "Homeland Security assistance should be based strictly on an assessment of risks and vulnerabilities."

This section recognizes the need to address our greatest risks and vulnerabilities first, and then work down from there. This section does so in several important respects. First, it requires DHS to allocate homeland security assistance funds to states or regions based upon the degree to which such an allocation would lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure. Second, it reduces the current state minimum and restructures the allocation process. Under the current system, none of the funds available under the State Homeland Security Grant Program are allocated on the basis of risk. Instead, each state first receives a base amount equal to 0.75 percent of the total, and then an additional amount based solely on population. Under this section, in contrast, DHS must first allocate all funds based on risk, and then provide, if necessary, additional funds to those States, territories, or certain Indian tribes that have not met a significantly reduced minimum threshold of funding. Under this scheme, 99% of the money will be allocated strictly on the basis of risk.

In 2001, the Committee on the Judiciary, through the enactment of the U.S.A. PATRIOT Act, authorized the Office for Domestic Preparedness in DOJ to provide State grants that enhance the capa-

[99] Id. at 389.

bility of State and local jurisdictions to prepare for and respond to terrorist acts. The Committee on the Judiciary changed the name of this office to the Office of Domestic Preparedness in Public Law 107–273, the "21st Century Department of Justice Appropriations Authorization Act," and further authorized the ODP. The ODP was transferred from the Department of Justice to the Department of Homeland Security in H.R. 5005, the "Homeland Security Act," which became Public Law 107–296 on November 25, 2002.

Section 5051–5054. Federal Bureau of Investigation Revitalization

The Commission found that the FBI has made significant progress in improving its intelligence capabilities but recognized that the FBI Director himself recognizes that there is much to do. The Commission made a specific recommendation that embodies the vision of FBI Director Mueller regarding the needs to broaden recruitment efforts, retain experience, and to facilitate a trend towards specialization rather than the Bureau's historical model of generalization. "A specialized and integrated national security workforce should be established at the FBI consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of a culture imbued with a deep expertise in intelligence and national security" 9/11 Commission Report at 425–426. This section implements by giving the Director a variety of tools to retain employees with special skills.

Section 5091. Requirement that Agency Rulemaking Take Into Consideration Impacts on Individual Privacy

This section requires the President to consider the privacy impact of federal regulations. It reflects the following Commission recommendation: "As the President determines the guidelines for information sharing among government agencies and by those agencies with the private sector, he should safeguard the privacy of individuals about whom information is shared." Commission Report at 394. Section 5091 requires a federal agency to prepare a privacy impact analysis for proposed and final rules and to include this analysis in the notice for public comment issued in conjunction with the publication of such rules. This requirement is similar to other analyses that agencies currently conduct, such as those required by the Regulatory Flexibility Act and the E-Government Act of 2002. While § 5091 makes no substantive demands on federal agencies with respect to privacy, it is intended to ensure that federal agencies safeguard personally identifiable information by requiring these agencies to consider the privacy implications presented by the collection, use, dissemination, and protection of such information. Section 5091 consists of the text of H.R. 338, the "Federal Agency Protection of Privacy Act," a noncontroversial, bipartisan bill that passed by voice vote in the last Congress.

Section 5092. Chief Privacy Officers for Agencies with Law Enforcement or Anti-terrorism Functions

Section 5092 directs the head of each Federal agency with law enforcement or anti-terrorism functions to appoint a chief privacy officer with primary responsibility within that agency for privacy policy. The provision requires the chief privacy officer to ensure

that personally identifiable information is protected and to file annual reports with Congress on the agency's activities that affect privacy, including complaints of privacy violations. Section 5092 is largely premised on legislation establishing the first statutorily mandated privacy officer, which was included in the Homeland Security Act of 2002, Pub. L. No. 107–296, § 222, 116 Stat. 2135, 2155 (2002), and pending bipartisan legislation reauthorizing DOJ, H.R. 3036, 108th Cong. § 305 (2004). Section 5092 reflects the Commission's recommendation on privacy noted above.

Sections 5101–5105, Mutual Aid and Litigation Management Authorization Act of 2004

The Commission Report included the recommendation that "Congress should pass legislation to remedy the long-standing indemnification and liability impediments to the provision of public safety mutual aid * * * where applicable throughout the nation" Commission Report at 397. Sections 5101–5105 reflect this recommendation.

These mutual aid provisions allow states, if they so choose, to enter into mutual aid agreements to provide mutual aid in response to emergencies. They allow party states' first responders to carry with them into other states the liability regime of their home states. The mutual aid provisions also provide that the workers' compensation and death benefits of first responders who answer calls in other party states, and the home state rules that govern them, also follow them into other states. These sections also provide that whenever any person holds a certificate issued by a responding party that evidences the meeting of professional standards, such person shall be deemed so certified by the requesting party to provide assistance under the mutual agreement. The litigation management provisions allows states to enter into "litigation management agreements" in which they could agree that, in the event first responders from several states respond to a terrorist attack in another state, they could exercise certain options and agree on the liability regime that would apply in that circumstance to claims brought against first responders and arising out of terrorist attacks, including putting any such claims in federal court, a ban on punitive damages, and a collateral source offset rule.

Sections 5041–5045, Appointments Process Reform

The Commission recommendations include the recommendation to "minimize as much as possible the disruption of national security policymaking during the change of administrations by accelerating the process for national security appointments" Commission Report at 422. This section responds to this recommendation in three ways. First, § 5041 would reduce the number of national security positions that are subject to Senate confirmation. National Security Positions are defined as positions "concerned with the protection of the Nation from foreign aggression, terrorism, or espionage * * * that require regular use of, or access to, classified information." This will include some positions at DOJ and the FBI.

Those National Security Positions that are classified at Executive Levels IV and V (5 USC 5315 or 5316) would be appointed by the President directly, without Senate confirmation. This would include, among others, the assistant attorneys general at DOJ. Those

National Security Positions that are classified at Executive Levels II and III (5 USC 5313 or 5314) are still appointed by the President and subject to Senate confirmation. However, if the Senate does not vote on confirmation within 30 days after the president submits the nomination, the appointment shall be made by the president alone. Positions covered by this provision include, among others, the deputy attorney general, the solicitor general, and the director of the FBI. In addition to these national security appointments, agencies are required under § 5044 to submit a plan for reducing the number of presidential appointments that require Senate confirmation.

Second, § 5042 extends the length of time that a newly inaugurated President can appoint an acting officer to fulfill the duties of a job performed by someone whose confirmation is required by the Senate. It also removes certain qualifications in current law relating to those acting officers, provided that the office they are filling is one of 20 "specified national security positions."

Finally, § 5043 streamlines the financial reporting process for intelligence personnel. It substantially reduces the amount of detail that appointees must provide regarding their sources of income, assets and liability. For example, this section reduces the number of income reporting categories from eleven to five. It also streamlines income reporting for spouses and dependants. It is believed that these reductions still provide the level of detail necessary for the Office of Government Ethics to determine whether conflicts of interest exist.

AMENDMENTS ADOPTED IN COMMITTEE

The Committee adopted several amendments to H.R. 10 that are included within its overall amendment in the nature of a substitute.

A manager's amendment offered by Chairman Sensenbrenner and adopted by voice vote makes various technical and other changes to the legislation. As introduced, H.R. 10 provided the CIA with overall direction for the collection of national intelligence through human sources. The amendment preserves and reiterates the congressional prohibition on domestic human intelligence activities undertaken by the CIA. CIA direction and coordination of FBI human intelligence within the U.S. is inconsistent with the long-standing 1947 National Security Act ban on CIA law enforcement powers and internal security functions. The amendment also requires the Secretary of DHS to consult with the Attorney General regarding various new security procedures for airports and aviation contained in the bill and requires that reports on the use of these procedures be provided to the Judiciary Committee.

The Sensenbrenner amendment further requires the Assistant Secretary for ICE and the Director of Federal Air Marshal Service of DHS, in coordination with the Assistant Secretary of Homeland Security, ensure that Transportation Security Administration screeners and Federal Air Marshals receive training in identifying fraudulent identification documents, including fraudulent or expired visas and passports, and allows such training to be made available to other federal law enforcement agencies and local law enforcement agencies located in border states. The Committee reported by voice vote a second degree amendment to the Sensenbrenner amendment offered by Mr. Scott to strike sense of Con-

gress language relating to the Transportation Security Administration examining passenger records for violent criminals and out standing warrants.

The Committee adopted by voice vote an amendment offered by Mr. Schiff that seeks to prevent the proliferation of weapons of mass destruction by expanding, improving and increasing funding for current non-proliferation programs including the Proliferation Security Initiative, programs for Cooperative Threat Reduction, and other non proliferation programs. The President is directed to submit to Congress no later than 180 days after the date of the enactment of this Act a non-proliferation strategy.

The Committee adopted by voice vote an amendment offered by Mr. Nadler to require the Secretary of DHS, in consultation with the Attorney General and appropriate federal, state, and local government agencies, as well as security experts and other interested persons, to issue regulations concerning the shipment of extremely hazardous materials not later than 180 days after the enactment of the legislation.

The Committee adopted by voice vote an amendment by Mr. Schiff that provides that whoever develops, possesses, or attempts or conspires to develop or possess radiological weapons be imprisoned for any term or for life. The amendment specifies that if persons or property of the U.S. or a national of the U.S. are threatened with these weapons in the U.S. or abroad they are also subject to a prison term for any term of years or for life; if death is a result of this violation, then the punishment may be death.

The Committee adopted by voice vote an amendment offered by Mr. Delahunt that requires the head of each department or agency of the federal government that is engaged in any activity to use or develop data mining technology to submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official. This amendment establishes criteria for the content of the report and requires that it be submitted within 90 days after enactment of this legislation and requires that it be updated each year.

The Committee adopted by voice vote an amendment by Mr. Schiff that provides that the U.S. work with the international community to develop an international legal regime to enable the interdiction of nuclear material and technology.

The Committee adopted by voice vote an amendment by Mr. Weiner that reauthorizes the COPS program as a single grant program with several purposes including to hire officers to perform intelligence, antiterrorism, or homeland security duties exclusively. This language is similar to language that the Committee adopted and the House passed as part of H.R. 3036, the DOJ reauthorization bill.

The Committee adopted by voice vote an amendment offered by Ms. Lofgren to establish an Integrated Biometric Entry-Exit Screening System with respect to the biometric entry/exit data system. It ensures that this biometric database is accessible to all persons processing immigration benefits, including visa applications with the Department of State, immigration-related filings with the Department of Labor, cases pending before the Exeuctive Office for Immigration Review, and matters pending or under investigation before DHS.

The Committee adopted by voice vote an amendment offered by Mr. Schiff expressing the sense of Congress that removing potential nuclear weapons materials from vulnerable sites around the world reduces the risk of terrorist attack and delineating several actions to reduce the threat of terrorist acquisition of nuclear materials. The amendment further requires, no later than 30 days after the submission of the President's FY 2006 budget, a report to Congress that lists where highly-enriched uranium or separated plutonium is located worldwide, a strategic plan to reduce the threat of this material falling into terrorist hands, an estimate of the funds required to secure these materials, and recommendations concerning the need for further legislation or international agreements to secure these nuclear sites.

The Committee adopted by voice vote an amendment offered by Mr. Nadler to authorize the Secretary of DHS to provide $100 million in security assistance to 501(c)(3) organizations that demonstrate they are at high risk of a terrorist attack based upon: Specific threats of international terrorist organizations; prior attacks against similarly situated organizations by international terrorists; the vulnerability of the specific site; the symbolic value of the site as a highly recognized American institution; or the role of the institution in responding to terrorist attacks. After the funds have been expended for the highest risk institutions, federal loan guarantees would be available to make loans available on favorable terms. Funds would be administered by a new office in the Department dedicated to working with high-risk non-profits.

The Committee adopted by voice vote an amendment offered by Mr. Weiner that would permit an applicant to use first responder grants to pay for personnel engaged in counterterrorism and intelligence activities, regardless of the date such persons were hired. This allows reimbursement for personnel costs to be retroactive. The Committee also adopted by voice vote an amendment offered by Mr. Weiner to provide reimbursement for overtime and other fixed costs incurred for homeland security purposes after September 11, 2001.

The Committee adopted by voice vote an amendment offered by Ms. Blackburn that establishes a pilot study to examine specific topics to be addressed in a report from the Attorney General, to identify current procedures already in place, and to make recommendations for consolidation and standardization of employee criminal background checks. The amendment requires the study to consider the utilization of commercial databases, state databases, any feasibility studies, and privacy rights and other employee protections. The amendment also adds to the bill the text of S.1743, the "Private Security Officer Employment Authorization Act" which passed the Senate by unanimous consent at the end of 2003.

The Committee adopted by voice vote an amendment by Mr. Berman that adds a new section to the Foreign Intelligence Surveillance Act of 1978. It allows the court to assume that a non-U.S. person who is engaged in terrorism is an agent of a foreign power under the Act.

The Committee adopted by voice vote an amendment offered by Mr. Schiff that amends the Racketeer Influenced and Corrupt Organization Act by adding crimes having to do with weapons of mass

destruction to the list of specified unlawful activities that serve as predicates for the money laundering statute.

The Committee adopted by voice vote an amendment by Ms. Jackson Lee to increase criminal penalties for alien smuggling, provide visas to smuggled aliens who cooperate with law enforcement officials, provide rewards to such aliens, and require the Secretary of DHS to develop an outreach program to educate the public about the penalties for alien smuggling. The Committee adopted by voice vote a second degree amendment offered by Mr. Hostettler to limit the provisions to the increase in criminal penalties and the establishment of the outreach program.

An amendment offered by Chairman Sensenbrenner to establish a Privacy and Civil Liberties Oversight Board to provide advice and counsel on policy development and implementation as it pertains to privacy and civil liberties implications of executive branch actions, proposed legislation, regulations, and policies related to efforts to protect the nation from terrorism passed the Committee by a recorded vote of 19–15. The Chairman's amendment was a complete substitute for an amendment offered by Mr. Watt that would have provided for a similar Board with broad administrative subpoena power and provided nearly unlimited authority to analyze all aspects of the nation's war on terrorism.

The Committee adopted by voice vote an amendment offered by Mr. Weiner that eliminates defenses in the current fake badge law.

HEARINGS

The Committee on the Judiciary held two hearings to specifically consider the recommendations of the 9/11 Commission. On August 20, 2004, the Subcommittee on Commercial and Administrative Law and the Subcommittee on the Constitution held a joint hearing entitled: "Privacy and Civil Liberties in the Hands of the Government Post-September 11, 2001: Recommendations of the 9/11 Commission and the U.S. Department of Defense Technology and Privacy Advisory Committee." The following witnesses testified: Lee Hamilton, Vice Chair, 9/11 Commission; Slade Gorton, Commissioner, 9/11 Commission; John Marsh, Jr., Member, Technology and Privacy Advisory Committee; and Nuala O'Connor Kelly, Privacy Officer, Department of Homeland Security.

On August 23, 2004, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing entitled: "Oversight Hearing on Recommendations of the 9/11 Commission." The following witnesses testified: Christopher Kojm, Deputy Executive Director, National Commission on Terrorist Attacks Upon the United States; John S. Pistole, Executive Assistant Director, Counterterrorism Division, Federal Bureau of Investigation; John O. Brennan, Director, Terrorist Threat Integration Center; and Gregory T. Nojeim, Associate Director, American Civil Liberties Union.

COMMITTEE CONSIDERATION

On September 30, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 10, with an amendment, by a recorded vote of 19 to 12, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following roll call votes occurred during the Committee's consideration of H.R. 10.

Rollcall No. 1: Subject: Nadler Amendment (Minimum Amounts) to H.R. 10. By a rollcall vote of 15 yeas to 18 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER	X		
MS. HART		X	
MR. FLAKE		X	
MR. PENCE			
MR. FORBES		X	
MR. KING			
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MS. BALDWIN		X	
MR. WEINER	X		
MR. SCHIFF	X		
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	15	18	

Rollcall No. 2: Subject: Jackson Lee Amendment (Verification of Documents) to H.R. 10. By a rollcall vote of 15 yeas to 20 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	

	Ayes	Nays	Present
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF	X		
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	15	20	

Rollcall No. 3: Subject: Berman/Delahunt Amendment (Limitation on Closed Immigration Hearings) to H.R. 10. By a rollcall vote of 15 yeas to 20 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		

	Ayes	Nays	Present
MR. DELAHUNT	X		
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF	X		
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	15	20	

Rollcall No. 4: Subject: Conyers Amendment in the nature of a substitute to H.R. 10. By a rollcall vote of 15 yeas to 20 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF	X		
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	15	20	

Rollcall No. 5: Subject: Nadler amendment (Whistle Blower) to H.R. 10. By a rollcall vote of 15 yeas to 20 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	

	Ayes	Nays	Present
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF	X		
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	15	20	

Rollcall No. 6: Subject: Jackson Lee amendment (Restriction on Airline Screening for Terrorists and Criminals) to H.R. 10. By a rollcall vote of 12 yeas, 17 nays, and 1 pass, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY			
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE			
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			

	Ayes	Nays	Present
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER			
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF			PASS
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	12	17	1 PASS

Rollcall No. 7: Subject: Jackson Lee amendment (Convention Against Torture) to H.R. 10. By a rollcall vote of 12 yeas, 18 nays, and 1 pass, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE			
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN	X		
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER			
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF			PASS
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	12	18	1 pass

Rollcall No. 8: Subject: Sensenbrenner amendment to the Watt amendment (Privacy and Civil Liberties Oversight Board) to H.R.

10. By a rollcall vote of 19 yeas, to 15 nays, the amendment was agreed to.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE	X		
MR. SMITH	X		
MR. GALLEGLY	X		
MR. GOODLATTE	X		
MR. CHABOT	X		
MR. JENKINS	X		
MR. CANNON			
MR. BACHUS	X		
MR. HOSTETTLER	X		
MR. GREEN	X		
MR. KELLER	X		
MS. HART	X		
MR. FLAKE	X		
MR. PENCE	X		
MR. FORBES	X		
MR. KING	X		
MR. CARTER	X		
MR. FEENEY	X		
MRS. BLACKBURN	X		
MR. CONYERS		X	
MR. BERMAN		X	
MR. BOUCHER			
MR. NADLER		X	
MR. SCOTT		X	
MR. WATT		X	
MS. LOFGREN		X	
MS. JACKSON LEE		X	
MS. WATERS		X	
MR. MEEHAN		X	
MR. DELAHUNT		X	
MR. WEXLER		X	
MS. BALDWIN		X	
MR. WEINER		X	
MR. SCHIFF		X	
MS. SANCHEZ		X	
MR. SENSENBRENNER, CHAIRMAN	X		
TOTAL	19	15	

Rollcall No. 9: Subject: Sanchez amendment (ID Security) to H.R. 10. By a rollcall vote of 12 yeas, 19 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	

	Ayes	Nays	Present
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN			
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF			
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	12	19	

Rollcall No. 10: Subject: Weiner amendment (Covered Grants) to H.R. 10. By a rollcall vote of 12 yeas, 19 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN			
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF			
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	

	Ayes	Nays	Present
TOTAL	12	19	

Rollcall No. 11: Subject: Watt amendment (intentional misconduct) to H.R. 10. By a rollcall vote of 12 yeas, 19 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN			
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF			
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	12	19	

Rollcall No. 12: Subject: Scott amendment (Litigation Management agreements) to H.R. 10. By a roll call vote of 12 yeas, 19 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	

	Ayes	Nays	Present
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN			
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER	X		
MS. BALDWIN	X		
MR. WEINER	X		
MR. SCHIFF			
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	12	19	

Rollcall No. 13: Subject: Jackson Lee amendment (Criminal History Information Checks) to H.R. 10. By a rollcall vote of 12 yeas, 19 nays, the amendment was defeated.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. GOODLATTE		X	
MR. CHABOT		X	
MR. JENKINS		X	
MR. CANNON			
MR. BACHUS		X	
MR. HOSTETTLER		X	
MR. GREEN		X	
MR. KELLER		X	
MS. HART		X	
MR. FLAKE		X	
MR. PENCE		X	
MR. FORBES		X	
MR. KING		X	
MR. CARTER		X	
MR. FEENEY		X	
MRS. BLACKBURN		X	
MR. CONYERS	X		
MR. BERMAN			
MR. BOUCHER			
MR. NADLER	X		
MR. SCOTT		X	
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT			
MR. WEXLER	X		
MS. BALDWIN	X		

	Ayes	Nays	Present
MR. WEINER	X		
MR. SCHIFF			
MS. SANCHEZ	X		
MR. SENSENBRENNER, CHAIRMAN		X	
TOTAL	11	20	

Rollcall No. 14: Subject: Motion to report H.R. 10, as amended. By a rollcall vote of 19 yeas to 12 nays, the motion was agreed to.

	Ayes	Nays	Present
MR. HYDE			
MR. COBLE	X		
MR. SMITH	X		
MR. GALLEGLY	X		
MR. GOODLATTE	X		
MR. CHABOT	X		
MR. JENKINS	X		
MR. CANNON			
MR. BACHUS	X		
MR. HOSTETTLER	X		
MR. GREEN	X		
MR. KELLER	X		
MS. HART	X		
MR. FLAKE	X		
MR. PENCE	X		
MR. FORBES	X		
MR. KING	X		
MR. CARTER	X		
MR. FEENEY	X		
MRS. BLACKBURN			
MR. CONYERS		X	
MR. BERMAN			
MR. BOUCHER			
MR. NADLER		X	
MR. SCOTT		X	
MR. WATT		X	
MS. LOFGREN		X	
MS. JACKSON LEE		X	
MS. WATERS		X	
MR. MEEHAN		X	
MR. DELAHUNT			
MR. WEXLER		X	
MS. BALDWIN		X	
MR. WEINER		X	
MR. SCHIFF	X		
MS. SANCHEZ	s	X	
MR. SENSENBRENNER, CHAIRMAN	X		
TOTAL	19	12	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE OF COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 10, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

OCTOBER 5, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman Committee on the Judiciary,
House of Representatives, Washinton, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 10, the 9/11 Recommendations Implementation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 10—9/11 Recommendations Implementation Act

Summary. H.R. 10 would affect the intelligence community, terrorism prevention and prosecution, and border security, as well as international cooperation and coordination. Title I would establish an Office of the National Intelligence Director (NID) to manage and oversee intelligence activities of the U.S. government, including foreign intelligence and counterintelligence activities. The legislation would transfer some existing intelligence organizations to that office and would establish a National Counterterrorism Center and one or more national intelligence centers within the Office of the NID. Title II would authorize funding for law enforcement, counterterrorism activities, and programs related to aviation safety. Title III would increase the number of agents performing border security and immigration functions, improve the security of identity documents such as driver's licenses, and increase the number of consular officers within the Department of State. Title IV would authorize funds for a number of international cooperation programs. Finally, title V would reauthorize and restructure several homeland security programs.

CBO estimates that implementing H.R. 10 would cost about $800 million in 2005 and $17.5 billion over the 2005–2009 period, assuming appropriation of the specified and estimated amounts. That total does not include possible additional costs associated with implementing provisions dealing with the creation of an interoperable data system for exchanging law enforcement and intelligence data or the establishment of a Federal Bureau of Investigation (FBI) reserve service because CBO does not have sufficient information to estimate those costs at this time. With regard to the FBI reserve

service, CBO cannot predict when a national emergency would occur, but expects that costs for the proposed reserve service would likely be insignificant in most years.

The bill also contains provisions that would decrease direct spending. In particular, it would establish a fund within the Department of Homeland Security (DHS) to enhance efforts to detect explosives at security checkpoints in airports; authorize the collection and spending of $30 million a year of fees from airline passengers in 2005 and 2006 for that purpose; allow the Director of the FBI to waive the mandatory retirement requirement for agents until age 65; and extend indefinitely the authority of the Central Intelligence Agency (CIA) to offer incentive payments to employees who voluntarily retire or resign. CBO estimates that enacting those provisions would decrease direct spending by about $25 million in 2005, $4 million over the 2005–2009 period, and $2 million over the 2005–2014 period. The estimate of direct spending does not include the effects of extending the authority of the CIA to offer incentive payments to employees who voluntarily retire or resign because the data needed to prepare such an estimate are classified. Enacting H.R. 10 would not affect receipts.

H.R. 10 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that those mandates, in aggregate, would impose costs on state, local, and tribal governments totaling more than $600 million over fiscal years 2005 through 2009. CBO estimates that the costs in at least one of those years would exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation). The bill would authorize appropriations for grants to states to cover such costs.

H.R. 10 would impose private-sector mandates as defined in UMRA on shippers of hazardous materials and licensees of nuclear facilities. Because the impact of two of the mandates would depend on future actions of the Department of Homeland Security and the Nuclear Regulatory Commission (NRC) for which information currently is not available, CBO cannot determine whether the costs to the private sector would exceed the annual threshold for private-sector mandates ($120 million in 2004, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 10 is summarized in Table 1. The costs of this legislation fall within budget functions 050 (national defense), 400 (transportation), 450 (community and regional development), 550 (health), 750 (administration of justice), and 800 (general government).

Basis of Estimate: Most of H.R. 10's effects on the federal budget would be subject to appropriation of amounts necessary to implement the bill. For this estimate, CBO assumes that the bill will be enacted by the end of the calendar year, that all such amounts will be appropriated near the start of each fiscal year, and that outlays will follow historical patterns for similar activities.

TABLE 1. BUDGETARY IMPACT OF H.R. 10, THE 9/11 RECOMMENDATIONS IMPLEMENTATION ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY

	By Fiscal Year, in Millions of Dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Estimated Authorization Level	2,311	6,223	2,559	4,700	5,264
Estimated Outlays	798	4,950	3,004	4,062	4,670
CHANGES IN DIRECT SPENDING [2]					
Estimated Budget Authority	*	*	*	*	*
Estimated Outlays	−25	−12	19	10	5

Note: * = Between zero and -$500,000.

[1] These amounts do not include the costs of section 2192 because CBO cannot estimate such costs at this time. The amounts also exclude the costs associated with establishing a reserve service within the Federal Bureau of Investigation. Any such costs would be insignificant in most years, and CBO has no basis for predicting when a national emergency would occur.

[2] These amounts do not include the costs of section 1061 because the data needed to prepare an estimate are classified.

Spending Subject to Appropriation

H.R. 10 contains provisions that would affect the intelligence community, terrorism prevention and prosecution, and border security, as well as international cooperation and coordination. Table 2 presents CBO's estimates of the cost of those provisions. In total, we estimate that implementing H.R. 10 would cost $17.5 billion over the 2005–2009 period, assuming appropriation of the specified and estimated amounts. That total does not include the possible additional costs associated with implementing provisions dealing with the creation of an interoperable data system for exchanging law enforcement and intelligence data or the establishment of an FBI reserve service because CBO does not have sufficient information to estimate those costs at this time. With regard to the FBI reserve service, CBO cannot predict when a national emergency would occur, but expects that costs for the proposed reserve service would likely be insignificant in most years.

TABLE 2. ESTIMATED CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 10 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
Reform the Intelligence Community:					
Estimated Authorization Level	40	235	75	90	70
Estimated Outlays	30	60	110	145	140
Combating Financial Crimes:					
Authorization Level	51	0	0	0	0
Estimated Outlays	36	15	0	0	0
Aviation Security:					
Estimated Authorization Level	528	4,343	330	0	0
Estimated Outlays	238	3,666	957	340	0
Improve Intelligence Capabilities of the FBI:					
Estimated Authorization Level	4	5	6	7	8
Estimated Outlays	3	5	6	8	8
Security for Nuclear Facilities:					
Estimated Authorization Level	1	2	2	2	2
Estimated Outlays	−2	4	2	2	2
Community-Oriented Policing Services:					
Authorization Level	1,008	1,027	1,047	0	0
Estimated Outlays	22	528	40	671	364
Increase the Number of Border Patrol and Immigration Agents:					
Estimated Authorization Level	0	174	526	981	1,451
Estimated Outlays	0	165	509	958	1,427

TABLE 2. ESTIMATED CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 10 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY—Continued

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
Grants to Improve Security of Driver's Licenses:					
Estimated Authorization Level	80	30	30	10	10
Estimated Outlays	80	30	30	10	10
New Standards for Issuance of Birth and Death Certificates:					
Estimated Authorization Level	330	20	30	40	50
Estimated Outlays	70	150	160	35	45
Expand Immigration Services at Foreign Airports:					
Authorization Level	49	88	137	0	0
Estimated Outlays	39	80	127	28	0
Increase the Number of Consular Officers:					
Estimated Authorization Level	0	33	62	93	125
Estimated Outlays	0	27	54	84	115
Reform International Cooperation and Coordination:					
Estimated Authorization Level	17	17	17	7	7
Estimated Outlays	7	15	17	15	9
First-Responder Grants:					
Estimated Authorization Level	0	0	0	3,314	3,381
Estimate Outlays	0	0	0	1,491	2,350
Security for Nonprofit Organizations:					
Estimated Authorization Level	168	168	168	0	0
Estimated Outlays	45	128	168	123	40
Counternarcotics Office:					
Estimated Authorization Level	6	6	6	6	6
Estimated Outlays	4	6	6	6	6
Security Clearance Modernization:					
Estimated Authorization Level	23	68	116	143	147
Estimated Outlays	21	64	111	140	147
Public Safety Communications Interoperability:					
Estimated Authorization Level	6	6	6	6	6
Estimated Outlays	5	6	6	6	6
Total Changes[1]:					
Estimated Authorization Level	2,311	6,223	2,559	4,700	5,264
Estimated Outlays	798	4,950	3,004	4,062	4,670

[1] These amounts do not include the costs of section 2192 because CBO cannot estimate such costs at this time. The amounts also exclude the costs associated with establishing a reserve service within the Federal Bureau of Investigation. Any such costs would be insignificant in most years, and CBO has no basis for predicting when a national emergency would occur.

Note: FBI = Federal Bureau of Investigation.

Reform the Intelligence Community. Title I would reform the intelligence community by establishing the position of National Intelligence Director and an Office of the National Intelligence Director to manage and oversee intelligence activities of the U.S. government, including foreign intelligence and counterintelligence activities. The legislation also would transfer some existing organizations, specifically the Office of the Deputy Director of Central Intelligence for Community Management and the Terrorist Threat Integration Center (TTIC), to that office and would establish a National Counterterrorism Center and one or more national intelligence centers within the Office of the NID. The bill would expand language training within the intelligence community and authorize additional scholarships for new recruits. Finally, the legislation would establish a civilian linguist reserve corps.

CBO estimates that implementing title I and other provisions relating to the intelligence community would cost about $490 million over the 2005–2009 period (see Table 3). These costs are in addition to those that would be incurred under current law by the Office of the Deputy Director of Central Intelligence for Community Management and the Terrorist Threat Integration Center. The esti-

mated costs include expenses to establish, house, and administer the new Office of the National Intelligence Director and implement other specified programs, such as improving training programs and establishing a scholarship program.

TABLE 3. ESTIMATED CHANGES IN SPENDING SUBJECT TO APPROPRIATION FOR REFORMING THE INTELLIGENCE COMMUNITY UNDER H.R. 10 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
Create the Office of the National Intelligence Director:					
Estimated Authorization Level	15	210	50	80	60
Estimated Outlays	10	35	80	135	130
Other Program Authorizations:					
Estimated Authorization Level	25	25	25	10	10
Estimated Outlays	20	25	25	10	10
Total Changes:					
Estimated Authorization Level	40	235	75	90	70
Estimated Outlays	30	60	110	145	140

Create the Office of the National Intelligence Director. CBO estimates that establishing, housing, and administering the Office of the NID would cost about $390 million over the 2005–2009 period.

The bill would transfer the Office of the Deputy Director of Central Intelligence for Community Management (identified as the Intelligence Community Management Account within the budget) and the TTIC to the Office of the NID.

The Intelligence Community Management Account (ICMA) was established by Congressional direction to provide resources that directly support the Director of the Central Intelligence Agency and the intelligence community as a whole in coordinating cross-program activities. Because part of its budget is classified, CBO does not know the overall size of this organization. Unclassified budgets for the ICMA indicate that the office has a staff of about 300 people who develop the National Foreign Intelligence Program budget, oversee research and development activities, and develop intelligence plans and requirements, but the Congress also authorizes and appropriates funds for additional staff in the classified portion of the intelligence budget.

Similarly, CBO has no budget information on the TTIC, but public information released by the White House indicates that the center opened in May 2003 with a staff of about 60 people working alongside the counterterrorism offices of the Federal Bureau of Investigation and the CIA. That same information indicates that the Administration expects to eventually staff the TTIC with between 200 and 300 people to serve as the hub for all intelligence regarding terrorist threats.

CBO expects that the NID would require staff to perform its authorized functions in addition to the staff transferred from the ICMA and the planned staff for the TTIC. Because much of the detailed information regarding the organization, staffing levels, and budgets of the intelligence community are classified at a level above clearances held by CBO employees, CBO has used information about staff requirements from similar organizations within the Department of Defense (DoD), the Department of Homeland Security, and other federal agencies to attempt to estimate the number

of additional staff that might be needed by the NID. Based on that analysis, CBO estimates that the NID might need to hire around 300 new staff, including appointees such as principal and deputy directors, key managers such as a general counsel, a civil liberties protection officer, personnel to perform administrative functions such as policy development and budget and finance activities, and personnel for the National Counterterrorism Center and one or more national intelligence centers. CBO expects that many of these new hires would be staff transferred from other organizations within the intelligence community but that those other organizations would eventually fill many of the vacated positions within their organizations over about a four year period following enactment of this legislation.

Based on information about the staffing levels and costs for the administrative offices of the Department of Defense, the Department of Homeland Security, and other agencies, CBO estimates that the personnel and related expenses to provide centralized leadership, coordination, and support and analytical services for the Office of the National Intelligence Director would eventually cost around $45 million annually, but that costs would be much lower in the first few years as positions are filled. CBO estimates that such costs would be minimal in the first year and total about $130 million over the 2005–2009 period.

Section 1094 would express the sense of the Congress that the permanent location of the NID headquarters be at a location other than the George Bush Center for Intelligence in Langley, Virginia. For this estimate, CBO assumes that the Director's office and associated staff would occupy the space currently used by the Intelligence Community Management staff until fiscal year 2007. Starting in 2007, CBO assumes that the office would move to new office space in a building owned by the General Services Administration (GSA) until a new building can be built for its use. CBO estimates that initially GSA would need to renovate and furnish office space for the NID staff. (After 2009, CBO expects that these positions would be relocated to the new permanent NID headquarters.) CBO estimates that the GSA rental payments would reach about $20 million a year and total about $40 million over the 2007–2009 period. Additional costs to purchase computers, network equipment, and supplies in the first few years following the relocation into the GSA-owned building also would be significant. CBO estimates that those costs would total $30 million over the 2007–2009 period.

CBO assumes that GSA would construct a new building on land already owned by the federal government to serve as the headquarters for the Office of the NID. Based on information provided by GSA about recent federal office building projects, CBO estimates that planning and design of the new headquarters would cost $15 million over the 2005–2006 period, and that constructing the facility to house NID employees would cost about $175 million over the 2006–2009 period. (An additional $20 million in spending would occur in 2010 to complete construction of the new building.) CBO assumes that the headquarters would be located on property already owned by the federal government in the Washington, D.C. area. If GSA had to buy land for the building site, costs would be higher. CBO assumes that construction of the new facility would not start until sometime in late 2006 and would be completed after

2009. Therefore, CBO estimates that no costs associated with furnishing, equipping, and maintaining the new space would be incurred during the 2005–2009 period nor would there be costs to relocate NID staff from the interim offices to the new headquarters over that period.

Other Program Authorizations. Title I also would authorize the President and the NID to initiate or enhance several programs within the intelligence community. Based on information from the Administration and on the costs of other similar efforts, CBO estimates that those efforts would cost about $20 million in 2005 and total around $90 million over the 2005–2009 period, subject to appropriation of the specified and estimated amounts.

- Section 1052 would authorize the appropriation of an additional $2 million a year to carry out the grant program for the National Flagship Language Initiative, which was established to improve higher education in foreign languages that the Secretary of Defense has identified as critical to the interests of the national security of the United States. CBO estimates that implementing this section would cost $10 million over the 2005–2009 period, assuming appropriation of the specified amounts.
- Section 1053 would establish a new scholarship program within the National Security Education Trust Fund. The scholarships would be available to students who are U.S. citizens and are native speakers of a foreign language that is identified as critical to the national security interests of the United States. The scholarships would enable those students to pursue English language studies at an institution of higher education in the United States to attain proficiency in those skills. The bill would authorize the appropriation of $4 million a year starting in 2005 for these scholarships. CBO estimates that the costs for the scholarship program would total about $20 million over the 2005–2009 period, assuming appropriation of the specified amounts.
- Section 1055 would establish a program operated jointly by the NID and the Department of Defense to advance foreign language skills in languages that are critical to the capability of the intelligence community to carry out national security activities. Under this provision, personnel from the intelligence community could be reimbursed for the total cost of tuition and training in foreign language studies undertaken at educational institutions that have entered into educational partnerships with the U.S. government. In addition, federal agencies would be allowed to provide financial assistance to those educational institutions, including the loan of equipment and instructional materials. CBO has no specific information about how this joint NID/DoD program would be implemented. Assuming that participation levels would be similar to those for another foreign language program offered within the National Security Education Trust Fund, CBO estimates that the new program would cost about $1 million a year.
- Section 1056 would allow the NID to establish a civilian linguist reserve corps consisting of U.S. citizens with advanced levels of proficiency in foreign languages. CBO assumes that members of the reserve corps would receive pay, transpor-

tation, and per diem when performing work for the federal government as requested by the President. The pilot project would be conducted for a three-year period, starting in 2005. Based on information provided by the staff of the National Security Education Program, CBO expects that the reserve corps would consist of about 150 people at any given time and cost about $50 million over the 2005–2007 period.

- Section 1062 would establish an Emerging Technologies Panel within the National Security Agency to advise the NID on the research, development, and application of existing and emerging science and technology advances, advances in encryption, and other topics. Based on the budgets of other advisory panels, CBO estimates that the costs to operate this panel would be about $1 million in 2005 and would total $10 million over the 2005–2009 period.

Combating Financial Crimes. Sections 2101 and 2102 would authorize the appropriation of $51 million for fiscal year 2005 for the Financial Crimes Enforcement Center to improve its computer systems and to assist states and localities in combating financial crimes. CBO estimates that this provision would result in outlays of $36 million in 2005 and $15 million in 2006, assuming appropriation of the specified amount.

Aviation Security. Title II would authorize the appropriation of the funds necessary to continue aviation security programs in 2006 and to deploy explosive-detection equipment at airport check points. Based on information from DHS and current funding levels, CBO estimates that title II would authorize the appropriation of about $5.2 billion over the 2005–2007 period for aviation security programs administered by DHS. We estimate that most of that amount—roughly $4 billion—would be authorized to be appropriated in fiscal year 2006 for ongoing programs administered by the Transportation Security Administration (TSA) and for the federal air marshals. (That estimate is net of almost $2 billion in offsetting collections from passenger and air-carrier fees that we assume will continue to be collected by DHS in 2006 to partly offset the cost of aviation security programs in that year.) This estimate also includes almost $1 billion over the 2005–2007 period for installing explosive-detection equipment at airport screening checkpoints and $70 million in 2005 for programs to better control access to airports, improve passenger screening, and train federal law enforcement officials in certain counterterrorism measures. In addition, title II would specifically authorize the appropriation of $95 million in 2005 for security projects at airports and $2 million for a pilot program to test technology to reduce the threat of explosions of baggage and cargo on commercial flights. Assuming appropriation of the specified and estimated amounts, CBO estimates that implementing all of these provisions would cost $238 million in 2005 and $5.2 billion over the 2005–2009 period.

Improve the Intelligence Capabilities of the FBI. Section 2193 would direct the FBI to continue to improve the intelligence capabilities of the bureau and to develop and maintain a national intelligence workforce within the FBI. Today, the FBI spends about $30 million on counterterrorism training. Since 2002, more than 1,500 agents have been added to the bureau's staff to meet its counterterrorism mission, an increase of about 20 percent. In addition, since

the events of September 11, 2001, the FBI has partnered with other intelligence agencies to provide training in counterterrorism and counterintelligence to its staff, and it plans to increase that training in the future. CBO assumes that implementation of this bill would require the agency to conduct more extensive training than is currently planned. Based on information from the bureau, we estimate that this additional training would cost $3 million in 2005 and almost $30 million over the 2005–2009 period, assuming appropriation of the necessary amounts.

Interoperable Law Enforcement and Intelligence Data System. Under the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173), the Administration is required to integrate all law enforcement data into an interoperable electronic data system known as the Chimera system. However, the act did not establish a firm date by which the Administration must deploy a fully operational Chimera system. Section 2192 would transfer the responsibility for this activity to the NID. The provision would direct the NID to design a state-of-the-art Chimera system with both biometric identification and linguistic capabilities satisfying the best technology standards, and to deliver a fully operational system by September 11, 2007, for use by the intelligence community, federal law enforcement agencies, and counterterrorism personnel to collect and share information. Although CBO believes that establishing a firm deadline for the operational system would likely result in increased discretionary spending in the near term, CBO does not have sufficient information to estimate that increase at this time. Absent information as to whether this transfer would result in changes to the system, CBO also cannot estimate whether any long-term costs would result from this transfer.

Security for Nuclear Facilities. Section 2194 of the bill would require the Nuclear Regulatory Commission (NRC) to study several types of threats to the nation's nuclear facilities, update the rules regarding the types of threats nuclear facilities should be able to deflect, and undertake force-on-force exercises regularly to maintain nuclear facilities' readiness to defend against attacks. Although the bill would authorize $3 million for such purposes, based on information from the NRC, CBO estimates that the provision would have a gross cost of $7 million in 2005 and $22 million over the 2005–2009 period. However, the NRC has the authority to offset a substantial portion of its annual appropriation with fees charged to the facilities it regulates. Accounting for such collections, CBO estimates that implementing those provisions would result in a net cost of $9 million over the 2005–2009 period.

Community-Oriented Policing Services (COPS). Section 2195 would authorize the appropriation of just over $1 billion for each of fiscal years 2005 through 2007 for the Community-Oriented Policing Services (COPS) program. Assuming appropriation of the specified amounts, CBO estimates this provision would cost about $2.5 billion over the 2005–2009 period.

Increase the Number of Border Patrol and Immigration Agents. Sections 3003 and 3004 would direct DHS to increase the number of border patrol agents by 2,000 per year and the number of investigators of immigration violations by 800 each year over the 2006–2010 period. Implementing this provision would increase the number of federal agents by 14,000 by 2010. Assuming appropriation of

the necessary amounts, CBO estimates that this provision would cost $165 million in fiscal year 2006 and $3.1 billion over the 2006–2009 period.

Grants to Improve the Security of Driver's Licenses. Section 3055 would authorize the appropriation of such sums as necessary for fiscal years 2005 through 2009 for DHS to make grants to states to cover the costs of improving the security of driver's licenses as required by the bill. Based on information from states and from the American Association of Motor Vehicle Administrators (AAMVA), CBO estimates that implementing this provision would cost $80 million in 2005 and $160 million over the 2005–2009 period, assuming appropriation of the necessary amounts.

New Standards for Issuance of Birth and Death Certificates. Sections 3062 and 3063 would require new federal standards governing the issuance and management of birth certificates recognized by the federal government. Section 3064 would require the establishment of a uniform electronic birth and death registration system, and section 3065 would extend that system to allow electronic verification of vital records.

Maintaining birth and death records has long been a function of state governments. The Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention (CDC), currently works with states to compile birth and death data for epidemiological studies. H.R. 10 would authorize the Secretary to expand that cooperation to the formal linking of birth and death records for purposes of preventing fraud and other government uses. The bill also would authorize the appropriation of such sums as may be necessary for these activities, including grants to states to comply with these new requirements.

Based on information from the CDC and the National Association for Public Health Statistics and Information Systems, CBO estimates that implementing the new security standards and building the electronic system of vital records would cost $460 million over the 2005–2009 period, assuming appropriation of the necessary amounts. That cost would be for grants to states to meet the new federal requirements. Of these amounts, $70 million in 2005 and $330 million over the 2005–2009 period would cover start-up costs, including digitalizing old birth and death certificates, building electronic systems for reporting deaths in some states, upgrading security arrangements, and acquiring computer infrastructure. CBO estimates that operating the new system for vital records over the 2006–2009 period would cost $130 million. We expect that the system would be fully operational in 2009, at which point annual operating costs would total $50 million.

Expand Immigration Services at Foreign Airports. Sections 3082 and 3083 would authorize the appropriation of $49 million for 2005, $88 million for 2006, and $137 million for 2007 for DHS to expand preinspection services and immigration security at foreign airports. CBO estimates that implementing this provision would cost $274 million over the 2005–2009 period, assuming appropriation of the specified amounts.

Increase the Number of Consular Officers. Section 3084 would authorize the Secretary of State to increase the number of consular officers by 150 each year over the number allotted in the previous year during the 2006–2009 period. It also would authorize the Sec-

retary to provide additional training to consular officers in the detection of fraudulent documents presented by applicants for admission into the United States. Based on the average cost of training and stationing consular officers overseas, CBO estimates that implementing the provision would cost $27 million in 2006 and $280 million over the 2006–2009 period.

Reform International Cooperation and Coordination. Title IV would require the President to produce numerous reports, express the sense of the Congress on many issues, and urge the President to seek agreements with other countries to improve cooperation in the global fight against terrorist organizations. The title also would authorize some additional spending. Subtitle D, the Afghanistan Freedom Support Act Amendments of 2004, would authorize additional rule-of-law, disarmament, and counternarcotics activities in Afghanistan by the U.S. Department of State, but would not increase the overall authorization of appropriations above the $425 million authorized for each of fiscal years 2005 and 2006 in current law.

Title IV contains three indefinite authorizations of appropriations and other provisions that CBO estimates would cost $7 million in 2005 and $63 million over the 2005–2009 period, assuming appropriation of the necessary amounts. In the cases where the same provision has been included in other bills at specified authorization levels, CBO used that authorization level for this estimate. CBO assumes that spending for these programs will follow the historical pattern of similar programs.

- Section 4041 would authorize the appropriation of such sums as may be necessary in 2005, 2006, and 2007 to provide grants to American-sponsored schools in predominately Muslim countries to provide scholarships to students from lower- and middle-income families of those countries. H.R. 4303, the American Education Promotion Act, as ordered reported by the House Committee on International Relations on June 24, 2004, would authorize the appropriation of $5 million each year for such grants. That amount is included in this estimate.
- Section 4042 would authorize the appropriation of such sums as may be necessary in 2005, 2006, and 2007 for grants by the National Endowment for Democracy to enhance free and independent media worldwide. H.R. 1950, the Foreign Relations Authorization Act, Fiscal Years 2004 and 2005, as reported by the House Committee on International Relations on May 16, 2003, would have authorized $15 million for such grants. CBO assumes the amount would be provided in three equal installments over the three-year period.
- Section 4103 would authorize the appropriation of such sums as may be necessary for programs to reduce the number of shoulder-fired missiles. For the purpose of the estimate, CBO assumed the appropriation of $5 million each year, an amount similar to the cost of other programs for reducing the availability of small arms.
- Section 4035 would establish within the Department of State an Office on Multilateral Negotiations. In our estimate for H.R. 4053, the United States International Leadership Act of 2004, as ordered reported by the House Committee on International Relations on March 31, 2004, CBO estimated that es-

tablishing and operating an Office on Multilateral Negotiations would cost $2 million a year.

• Sections 4011 and 4012 would require the Secretary of State to fill vacancies on the Arms Control and Nonproliferation Advisory Board and to provide resources to procure the services of experts and consultants. Based on the cost of other advisory boards, CBO estimates that implementing these sections would cost less than $200,000 a year.

First-Responder Grants. Subtitle A of title V would authorize funding for grants to state and local governments for staff and equipment to respond to acts of terrorism and natural disasters. It would authorize the Secretary of the Department of Homeland Security to change the criteria used to distribute funding for four existing first-responder grant programs—the State Homeland Security, the Urban Area Security Initiative, the Law Enforcement Terrorism Prevention, and the Citizen Corps grant programs. Assuming appropriation of the necessary funds, CBO estimates that implementing this subtitle would cost $3.8 billion over the 2008–2009 period.

Almost $10 billion has been appropriated for first-responder grants since fiscal year 2003, including about $3 billion in fiscal year 2004. The Office of Domestic Preparedness (within DHS) derives its primary authority to distribute grants to states and localities to prepare and respond to terrorism from the USA Patriot Act (Public Law 107–56). That law authorized the appropriation of such sums as necessary for first-responder grants through fiscal year 2007. This subtitle would supersede this authority for first-responder grants in the Patriot Act and continue the authorization to appropriate such sums as necessary after 2007.

For this estimate, CBO assumes that the amount in CBO's baseline—$3.3 billion—would be appropriated for first-responder grants in 2008 and that 2009 funding levels for first-responder grants would continue at that level, adjusted for anticipated inflation.

Security for Nonprofit Organizations. Section 5022 would authorize the appropriation of $100 million for 2005 and such sums as are necessary in 2006 and 2007 for DHS to contract with appropriate companies to improve security at those 501(c)3 nonprofit organizations that are determined to be most vulnerable to potential terrorist attacks. In addition, the bill would establish a new loan guarantee program for all nonprofit organizations that might need additional security enhancements to protect them from terrorist attacks. CBO estimates that this program would cost about $40 million over the 2005–2009 period. H.R. 10 also would authorize the appropriation of $50 million for 2005 and such sums as are necessary for 2006 and 2007 for grants to local law enforcement agencies to offset costs associated with increased security in areas with a high concentration of nonprofit organizations. Finally, the bill would authorize the appropriation of $5 million in 2005 and such sums as necessary in 2006 and 2007 for a new Office of Community Relations and Civic Affairs to administer the new security program for nonprofit organizations among other duties. Assuming appropriation of the necessary amounts, CBO estimates that implementing those provisions would cost $504 million over the 2005–2009 period.

Counternarcotics Office. Section 5021 would authorize the appropriation of $6 million in fiscal year 2005 to strengthen the authority of the Counternarcotics Officer at DHS. Under the bill, the Office of Counternarcotics Enforcement would be responsible for coordinating policies and federal operations aimed at preventing the entry of illegal drugs into the United States. DHS currently has a Counternarcotics Officer within the Chief of Staff's office. According to that office, the Counternarcotics Office is working with limited authority to coordinate the agency's anti-drug effort. Assuming the appropriation of the necessary amounts to continue this effort over the next five years, CBO estimates that implementing this provision would cost $28 million over the 2005–2009 period.

FBI Reserve Service. Section 5053 would allow the FBI to establish a reserve service consisting of former employees of the FBI who would be eligible for temporary reemployment during a period of national emergency. Under the bill, the total number of personnel in this reserve service could not exceed 500 individuals. Members of the reserve service would receive reimbursement for transportation and per diem expenses when participating in any training, and members who are retired federal employees would be allowed to collect both pay and retirement benefits during their period of reemployment. CBO cannot predict when a national emergency might occur, so no costs are included in this estimate for activating the proposed FBI Reserve Service. In most years, CBO expects that the cost associated with the reserve service would be insignificant—mostly covering limited training time, per diem, and transportation expenses. In an emergency, if all members of the reserve corps were reemployed for six months, the costs would total about $25 million.

Security Clearance Modernization. Beginning five years after enactment of this bill, section 5076 would require the Office of Personnel Management (OPM) to achieve a 60-day turnaround period for all security clearances requested by federal agencies. Currently, OPM anticipates that by the fall of 2005 the typical turnaround period for security clearances will be approximately 120 days. Based on information from OPM, CBO expects that approximately 1,700 new investigators would have to be hired over the next three years to meet the 60-day standard. With an average annual cost of about $80,000 per investigator, and assuming the appropriation of the necessary amounts, CBO estimates that this provision would cost $483 million over the 2005–2009 period.

Interoperability of Public Safety Communications. Section 5131 would establish a program within DHS to provide assistance and training to enhance the interoperability of public safety communication among federal, state, and local governments in high-risk jurisdictions. DHS currently conducts activities to enhance communications; however, according to that office, it is working with limited funds and legal authority. Based on information from DHS, CBO estimates that implementing this section would cost $29 million over the 2005–2009 period.

Direct Spending

The bill contains provisions that would decrease direct spending (see Table 4). CBO estimates that enacting those provisions would decrease direct spending by about $25 million in 2005, $4 million

over the 2005–2009 period, and $2 million over the 2005–2014 period. The estimate of direct spending does not include spending associated with extending the authority of the CIA to offer incentive payments to employees who voluntarily retire or resign because the data needed to prepare such an estimate are classified.

TABLE 4. CHANGES IN DIRECT SPENDING UNDER H.R. 10 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY [1]

	By fiscal year, in millions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Estimated Budget Authority	*	*	*	*	*	*	*	*	*	*
Estimated Outlays	−25	−12	19	10	5	3	*	*	*	*

[1] These amounts do not include the costs of section 1061 because the data needed to prepare an estimate are classified.
Note: * = Between zero and −$500,000.

Authority to Offer Incentive Payments to Employees of the CIA Who Voluntarily Resign or Retire. Section 1061 would extend indefinitely the authority of the CIA to offer incentive payments to employees who voluntarily retire or resign. Under current law, this authority would expire on September 30, 2005. This section also would eliminate the requirement that the CIA make a deposit to the Civil Service Retirement and Disability Fund equal to 15 percent of final pay for each employee who accepts an incentive payment. Extending authority to offer incentive payments to these employees could increase outlays from the Civil Service Retirement System in the near term, although those amounts would be offset by reduced retirement payments in later years. CBO cannot provide an estimate of the direct spending effects because the data needed for such an estimate are classified.

Aviation Security. Section 2177 would establish a fund within DHS to enhance efforts to detect explosives at security checkpoints in airports. The bill would authorize the collection and spending of $30 million a year of fees from airline passengers in 2005 and 2006.

The cost of the new program would be offset by fee collections authorized under the bill. TSA already collects a $2.50 fee from airline passengers each time they board an aircraft (with a maximum of $5.00 per one-way trip). Under current law, such fees may be collected only to the extent provided for in advance in appropriations acts, and income from those fees is recorded as an offset to appropriated spending. H.R. 10 would require TSA to collect up to $30 million a year from passengers without appropriation action. Under H.R. 10, we estimate that the agency would collect that amount each year. Because H.R. 10 would cause such fees to be used to finance the activities related to explosives detection at airport checkpoints, such fees would not be available to reduce the costs of other TSA spending. In other words, the collections under H.R. 10 would lead to a reduction in the amount of fees recorded as offsets to appropriated spending—essentially changing some discretionary offsetting collections into mandatory offsetting receipts.

Based on historical spending patterns for similar activities, CBO estimates that fees collected under this provision would exceed the amounts actually spent for explosives detection for the next few years. Hence, we estimate that enacting section 2177 would reduce net direct spending by $37 million in 2005 and 2006, but would in-

crease net direct spending in later years and have no net impact on the budget over the 2005–2014 period.

Increased Fines for New Federal Crimes. Several sections in title II would establish new federal crimes for offenses relating to the commission of terrorist acts. Because those prosecuted and convicted under the bill could be subject to fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are deposited as receipts in the Crime Victims Fund and later spent. CBO expects any additional revenues and direct spending under the bill would be negligible because of the small number of cases involved.

Authority to Waive Separation Age Requirement for FBI Agents. Section 5051 would provide the FBI with the ability to allow agents to remain at the agency beyond the age of 60. Under current law, FBI agents are required to retire at age 57, although the agency's director may waive that requirement until the agent turns 60. This section would allow the director to waive the mandatory retirement requirement until age 65. This authority would last though the end of 2009, at which time the waiver authority would revert to current law. Information provided by the FBI indicates that the agency issues waivers to between 25 and 75 employees annually. By expanding the current waiver authority, CBO expects the bill would cause some FBI employees to retire later than they otherwise would have. We anticipate this would cause retirement annuities to fall in the near term, and to increase after the expanded waiver authority expires in 2009. CBO estimates this section would reduce direct spending for retirement benefits by less than $500,000 in 2005 and by a total of $2 million over the 2005–2014 period.

Estimated impact on state, local, and tribal governments: H.R. 10 contains several intergovernmental mandates as defined in UMRA. The major mandates would require state, local, and tribal governments to significantly change the way they process and issue driver's licenses, identification cards, and birth and death certificates. The costs to state, local, and tribal governments would depend on federal regulations that are yet to be developed. However, based on information from state agencies, CBO estimates that, in aggregate, the intergovernmental mandates in the bill would impose costs on state, local, and tribal governments totaling more than $600 million over fiscal years 2005 through 2009. CBO estimates that the costs in at least one of those years would exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation). The bill would authorize appropriations for grants to states to cover such costs.

Intergovernmental Mandates with Significant Costs

Driver's Licenses. H.R. 10 would effectively require state agencies that issue driver's licenses to comply with new standards for producing, verifying, and ensuring the security of driver's licenses and identification cards. Those provisions would be effective three years after the bill's enactment. CBO considers these standards to be mandates because any driver's licenses issued after that time would be invalid for federal identification purposes unless they met those requirements.

Based on information from AAMVA and other groups representing state and local governments, CBO expects that states

would face significant additional costs to administer the new system. Specifically, state licensing agencies would be required to verify, with the issuing agency, each document presented as proof of identification and residency. Agencies such as the Social Security Administration currently charge a fee for each verification, and assuming that other agencies would charge similar fees, states would incur ongoing costs as well as one-time costs to upgrade computer systems to meet those requirements. States also would face significant costs to upgrade computer systems to digitize and store electronic copies of all source documents and to create and maintain the Driver's License Agreement, an interstate database to share driver information. Finally, certain states that do not currently require background checks for certain employees would face additional costs to complete those checks.

CBO assumes that states would begin to establish procedures for complying with those standards in 2005, the year following the bill's enactment; we estimate that they would incur additional costs totaling $80 million during that first year and another $80 million over fiscal years 2006 through 2009.

Issuance and Verification of Vital Statistics Information. H.R. 10 would impose several intergovernmental mandates with significant costs on state, local, and tribal agencies that issue birth and death certificates. Those agencies would effectively be required to print birth certificates on safety paper to establish a central database of vital information and to ensure that certain employees have security clearances. Those provisions also would be effective three years after the bill's enactment. Certificates issued after that would be invalid for certain purposes unless they met those requirements. We estimate that state, local, and tribal governments would face additional costs to comply with those requirements totaling more than $70 million in 2005 and almost $400 million over fiscal years 2006 through 2009. Most of those costs would be for upgrading computer software and hardware and for staff time to convert existing paper records into electronic records. Those are mostly one-time costs that would be incurred over the five-year period.

Security Assistance to Certain Nonprofit Organizations. This bill also would require state agencies responsible for homeland security to coordinate a program to provide security assistance to certain nonprofit organizations. The bill would authorize to be appropriated $100 million in fiscal years 2005 through 2007 to fund those grants, but no funds would be authorized to cover the costs states would incur for administering the program. According to representatives from state government, the administrative costs for similar assistance programs tend to equal about 3 percent to 5 percent of the monetary value of the assistance provided. Based on that information, CBO estimates that the cost for state governments to coordinate this program would total no more than $5 million annually.

Mandates with No Significant Costs

The bill also contains several other intergovern-mental mandates, but CBO expects that they would probably not impose significant additional costs on state, local, or tribal governments. Specifically, the bill would:

• Require state identification bureaus to coordinate background checks on current and potential security officers for private companies and the FBI. States that find the workload or the associated costs too burdensome could, through legislation, opt out of the program.

• Require certain nuclear facilities to take steps to protect against specific threats. The Nuclear Regulatory Commission would be required to promulgate regulations and until they are finalized, CBO cannot estimate the total costs of complying with those new requirements. Because few of the affected facilities are publicly owned, however, the total costs for those facilities would likely be small.

• Require state licensing agencies to include minimum features on all driver's license and identification cards, including full legal name, date of birth, gender, driver's license or identification number, photo, legal address, physical security features, and machine-readable technology. According to AAMVA, all states currently include those minimum features on licenses.

• Require state agencies to meet minimum standards before issuing driver's licenses, including documenting the individual's name, date of birth, address, and proof of Social Security number. While states currently set their own standards for such information, all states currently require at least this minimum documentation.

• Require states to maintain a database of driver information; require states to implement training classes for employees to identify fraudulent documents; and require documents and supplies to be securely stored. According to state officials, all states currently comply with those requirements.

• Require offices that maintain vital information to comply with requirements for securing their buildings. Based on information from representatives of state offices of vital statistics, CBO believes that most offices already would be in compliance, assuming that the Secretary of the Department of Homeland Security would establish minimum security requirements in any event.

• Require that state and local governments limit access to birth and death certificates. Fourteen states currently allow public access to those records, but CBO estimates that they would incur no additional costs to limit access.

• Prohibit states from accepting any foreign document, other than an official passport, for identification purposes for the issuance of driver's licenses. Currently, at least 10 states accept identification cards issued by foreign governments, such as the "matricula consular" issued by Mexico. This prohibition would preempt state authority.

• Require states to resolve any discrepancies that arise from verifying Social Security numbers, though the language is unclear as to what specific actions would be required. Currently, at least two states prohibit their employees from enforcing immigration laws, and many of those discrepancies may be related to immigration. This requirement might preempt those state laws.

- Prohibit states from displaying Social Security numbers on driver's licenses or from including Social Security numbers (SSNs) in bar codes, magnetic strips, or similar devices. CBO has found few instances where states used SSNs as identifiers on licenses or coded SSNs in some other manner on the license.
- Require all law enforcement officers who are armed, including state and local personnel, to have a standardized credential when traveling on aircraft. CBO assumes TSA would establish and issue such credentials.

Estimated Impact on the Private Sector: H.R. 10 would impose private-sector mandates as defined in UMRA on shippers of hazardous materials and licensees of nuclear facilities. Because the impact of two of the mandates would depend on future actions of the Department of Homeland Security and the NRC for which information currently is not available, CBO cannot determine whether the costs to the private sector would exceed the annual threshold for private-sector mandates ($120 million in 2004, adjusted annually for inflation).

The bill would require the Secretary of Homeland Security to issue regulations to increase the security of the shipment of extremely hazardous materials as defined in the bill. The bill would also require the NRC to issue regulations to ensure that its licensees address security threats to be identified by the NRC. At this time, there is no basis for predicting the scope of those future regulations. Therefore, CBO cannot estimate the cost of those mandates.

In addition, the bill would prohibit shippers of extremely hazardous materials from discharging or discriminating against any employee who provides information or assists in an investigation regarding a violation of any law related to the security of shipments of extremely hazardous materials. Such a prohibition would constitute a private-sector mandate under UMRA. Under current law, employees are protected if they report any safety issues. Because compliance with these broader whistle-blower protections would involve only a small adjustment in administrative procedures, CBO estimates that those shippers would incur only minimal additional costs.

Previous CBO estimates: On October 4, 2004, CBO transmitted cost estimates for H.R. 10 as ordered reported by the House Permanent Select Committee on Intelligence on September 29, 2004, and as ordered reported by the House Committee on Armed Services on September 29, 2004. On October 5, 2005, CBO also transmitted cost estimates for H.R. 10 as reported by the House Committee on Financial Services on October 5, 2004, and as ordered reported by the House Committee on Government Reform on September 29, 2004. The legislation approved by the House Committee on the Judiciary authorizes funding for the security of nuclear facilities, and nonprofit organizations, and for the COPS program. Differences in the estimated costs reflect differences among the three bills.

On September 24, 2004, CBO transmitted a cost estimate for S. 2840, the National Intelligence Reform Act of 2004, as reported by the Senate Committee on Governmental Affairs. Both bills would create a new Office of the National Intelligence Director and reform certain aspects of the intelligence community. H.R. 10 also would reform terrorism prevention and prosecution, border security, and

international cooperation and coordination activities—areas not addressed by S. 2840. Differences in the estimated costs reflect differences between the two bills.

Estimate prepared by: Federal Costs: Intelligence Programs: Raymond J. Hall; Homeland Security: Megan Carroll and Julie Middleton; Justice: Mark Grabowicz; Vital Records: J. Timothy Gronniger; International Programs: Joseph C. Whitehill; and General Government: Matthew Pickford. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Chad Goldberg and Jean Talarico.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 10 reduces the risk of terrorist attack against the United States by implementing many of the bipartisan recommendations of the National Commission to Investigate Terrorist Attacks Upon the United States.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the portions of the bill as reported by the Committee on the Judiciary that fall within its jurisdiction.[100] The Committee understands that a section by section analysis of the entire bill will be included in the report of the Permanent Select Committee on Intelligence.

TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

Section 1001. Short title

This section names this title the "National Intelligence Improvement Act of 2004."

Section 1011. Reorganization and improvement of management of the intelligence community

This section Act replaces §§ 102–04 of Title I of the National Security Act with the following new §§ 102, 102A, 103, 103A, 104 and 104A. New § 102 replaces the DCI with a National Intelligence Director ("NID"). The NID will be Presidentially appointed and Senate confirmed and serve as the head of the intelligence community. It prohibits the NID from simultaneously serving as the Director of the Central Intelligence Agency or as the head of any other element of the intelligence community.

New § 102A sets out the responsibilities and authorities of the NID. This section provides that the NID shall have access to all national intelligence and intelligence related to the national security,

[100] This section contains a summary of the principal provisions of H.R. 10 within the jurisdiction of the Committee; it does not comprise an exhaustive list of provisions of H.R. 10 within the jurisdiction of the Committee.

except as otherwise provided by law or guidelines agreed upon by the Attorney General and the NID. The NID will develop and present the annual budget for the National Intelligence Program (NIP). The NID must report to the Committees on Judiciary, Intelligence, and Armed Services a report of any transfer of personnel relative to the Committees' jurisdiction.

New § 103 establishes the Office of the NID to assist the Director in the performance of his or her duties. This section establishes specific responsibilities for a number of Deputies and Associates to assist the NID.

New § 104 establishes that the DCI shall assist the NID. His responsibilities include to: (1) collect intelligence through human sources and by other appropriate means, except that the DCI shall have no police, subpoena, or law enforcement powers or internal security functions; and (2) provide overall direction for the collection of national intelligence overseas or outside of the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized. The manager's amendment reported by the Committee inserted the qualifying phrase "overseas or outside the United States" to clarify that the CIA's collection authority is not domestic. The Committee also supported the continued limitation that the CIA shall not have police, subpoena or other law enforcement powers.

Section 1012. Revised definition of national intelligence

This section defines national intelligence and intelligence related to national security to refer to all intelligence, regardless of source and including information collected both domestically and overseas that involves threats to the U.S., its people, property or interest; the development or use of weapons of mass destruction; or any other matter bearing on the U.S. national or homeland security.

Section 1014. Role of the National Intelligence Director in appointment of certain officials responsible for intelligence-related activities

This section amends § 106 of the National Security Act to authorize the NID to recommend to the President individuals for appointment as the Deputy NID and the Director of the CIA. The section also allows the NID to concur with the Secretary of Defense in the selection of the head of the National Security Agency, National Reconnaissance Office, and the National Geospatial-Intelligence Agency. The NID shall consult, under this section on the selection for the positions of the Defense Intelligence Agency, Assistant Secretary of State for Intelligence and Research, Director of the Office of Intelligence of the Department of Energy, Director of the Office of Counterintelligence of the Department of Energy, Assistant Secretary for Intelligence and Analysis of the Department of Treasury, Executive Assistant Director for the Intelligence of the Federal Bureau of Investigation (FBI) or successor, Undersecretary of Homeland Security for Information Analysis and Infrastructure Protec-

tion, and the Deputy Assistant Commandant of the Coast Guard for Intelligence.

Section 1021. National Counterterrorism Center

Section 1021 establishes the National Counterterrorism Center, which will be the primary organization for analyzing and integrating all intelligence possessed or acquired by the U.S.—except for intelligence pertaining exclusively to domestic counterterrorism. The NCTC will also support DOJ, DHS, and other agencies in fulfillment of their responsibilities to disseminate terrorism information consistent with the law and guidelines agreed to by the AG and the NID. The Committee added the reference AG guidelines in the manager's amendment.

Section 1022. Civil Liberties Protection Officer

Section 1022 requires the NID to appoint a Civil Liberties Protection Officer ("CLPO") who would be responsible for ensuring that civil liberties and privacy protections are appropriately incorporated in the policies and procedures developed and implemented by the Office of the NID. In addition, the CLPO must: (1) Oversee compliance by the ONID and the NID with the Constitution and all laws, regulations, executive orders and implementing guidelines relating to civil liberties and privacy; (2) review and assess complaints and other information indicating possible civil liberties or privacy abuses; (3) ensure that the utilization of technologies sustain privacy protections regarding the use, collection, and disclosure of personal information; (4) ensure that personal information contained in a system of records (as defined in the Privacy Act) is handled in full compliance with the Act's fair information practices; (5) conduct privacy impact assessments when appropriate or required by law; and (6) perform such other duties as prescribed by the NID or required by law. Section 1022 authorizes the CLPO to refer complaints of civil liberties or privacy abuse to the appropriate Office of Inspector General responsible for the intelligence community department or agency to investigate.

Section 1031. Joint Intelligence Community Council

This section establishes the Joint Intelligence Community Council which will provide advice to the NID from the various heads of the Departments that contain elements of the Intelligence Community, including the Attorney General.

TITLE II—TERRORISM PREVENTION AND PROSECUTION

Section 2001. Individual Terrorists as Agents of Foreign Powers

This section now embodies the Berman amendment adopted at Committee which adds a new section to the Foreign Intelligence Surveillance Act of 1978. It allows the court to assume that a non-U.S. person who is engaged in terrorism is an agent of a foreign power under the Act.

Sections 2021–2024, Stop Terrorist and Military Hoaxes Act of 2004.

These sections incorporate the Stop Terrorist and Military Hoaxes Act of 2004. These sections create criminal and civil penalties

for whoever engages in any conduct, with intent to convey false or misleading information, that concerns an activity which would constitute such crimes as those relating to explosives; firearms; destruction of vessels; terrorism; sabotage of nuclear facilities; aircraft piracy; a dangerous weapon to assault flight crew members and attendants; explosives on an aircraft; homicide or attempted homicide or damaging or destroying facilities. They also prohibit making a false statement with intent to convey false or misleading information about the death, injury, capture, or disappearance of a member of the U.S. armed forces during a war or armed conflict in which the United States is engaged. Additionally, the bill increases penalties from not more than 5 years to not more than 10 years for making false statements, and obstructing justice, if the subject matter relates to international or domestic terrorism.

Sections 2041–2044. Material Support to Terrorism Prohibition Enhancement Act of 2004

Section 2042 adds a new crime of material support for terrorism for knowingly receiving military training from a foreign terrorist organization. The section requires that any person charged under this section must have knowledge that the organization is a terrorist organization. It also defines the term military-type training. The section provides for extraterritorial Federal jurisdiction over an offense under this section.

Section 2043 expands the crime of material support to terrorists to include any act of international or domestic terrorism and require that any person charged under this section must have knowledge that the organization is a terrorist organization. It also more clearly defines the term material support.

Section 2044 Financing of terrorism

This section amends 18 USC §2339C so that those who raise funds for terrorism can be prosecuted prior to the funds being transmitted to terrorist organizations.

Sections 2051–2053. Weapons of Mass Destruction Prohibition Improvement Act of 2004

These sections would amend 18 U.S.C. § 2332a(a)(2) which makes it a crime for a person to use a weapon of mass destruction (other than a chemical weapon) against any person within the U.S. and the result of such use affects interstate and foreign commerce. They would expand the coverage of the target to include property. They would also expand when Federal jurisdiction is affected by covering the use of mail or any facility of interstate or foreign commerce for the attack, by the property being used for interstate or foreign commerce, and when the perpetrator travels or causes another to travel in interstate or foreign commerce in furtherance of the offense. This section would also expand coverage to include the use of a chemical weapon.

Sections 2101–2102. Money laundering and terrorist financing

These sections authorize funding for the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). The section provides funding for the following: (1) Key technological improvements in FinCEN systems providing authorized law enforce-

ment agencies with Web-based access to FinCEN data; (2) Expedited filing of suspicious activity reports with the ability to immediately alert financial institutions about suspicious activities; (3) Provision of information sharing technologies to improve the Government's ability to exploit the information in the FinCEN databases; and (4) Provision of training in the use of technologies available to detect and prevent financial crimes and terrorism.

Section 2122 Conduct in aid of counterfeiting

This section equates the possession of anti-counterfeiting technology or components, with the intent that it be used in a counterfeiting scheme with the actual act of counterfeiting.

Sections 2141–2142. Criminal history background checks

These sections address the issue of criminal history records as they relate to background investigations. Section 2142 authorizes the Attorney General to establish and maintain a system for providing employers with criminal history information if the information is requested as part of an employee background check that is authorized by the State where the employee works or where the employer has their principal place of business. These sections also give the Attorney General flexibility, based on real-time terror concerns, to mandate criminal history record checks for certain types of employment that involve positions vital to the nation's infrastructure or key resources. This section would allow for a standardized approach to the numerous requests from groups that want or need access to these records. A piecemeal approach has evolved as the various bills that authorize criminal history record checks these go to different committees for consideration and if passed, end up in different sections of the code.

The purpose of this section is to set up a standard process with uniform procedures, definitions, fee structures where practical, and reasonable safeguards to protect privacy and employee rights. A reporting requirement under this section seeks to identify all statutory requirements that already require the Department of Justice to perform some type of record check, the type of information requested, and any variances that exist in terms, definitions, and fees charged. The amendment offered by Mrs. Blackburn, which was adopted, makes this a pilot study and establishes specific criteria to be addressed in the report that is required, including the effectiveness of using commercially available data bases as part of criminal history information checks. It is the intention of the Committee that this study last for 180 days.

Section 2143. Protect Act

This section amends Public Law No. 108–21, by extending the duration of pilot programs for volunteer groups to obtain national and State criminal history background checks from 18 months to 30 months.

Section 2144. Reviews of criminal records of applicants for private security officer employment

This section was added by the Blackburn amendment. It is the text of S.1743, the "Private Security Officer Employment Authorization Act" which passed the Senate by unanimous consent at the

end of 2003. This section makes findings as to the important role that private security officers play and stresses the importance of thoroughly screening and training officers. This section establishes a mechanism for authorized employers of security guards to request criminal history background checks using existing State identification bureaus. Criteria for disqualification mirrors that of existing state criteria and where a state has no criteria for such employment, this section provides general disqualifiers. A State may decline to participate in the program established by this section.

Section 2145. Task force on clearinghouse for IAFIS criminal history records

This section, created by the Blackburn amendment, establishes a task force to examine the establishment of a national clearinghouse to process criminal history record requests from employers providing private security guard services. It is the Committee's intent that the clearinghouse described in section 2145 shall only process criminal history record requests pertaining to employees or prospective employees of the private security guard service making the request pursuant to that section.

Section 2181. Federal law enforcement in-flight counterterrorism training

This section directs ICE and the Federal Air Marshal Service (in coordination with the Transportation Security Administration) to make available appropriate in-flight counterterrorism procedures and tactics training to Federal law enforcement officers who fly while on duty.

Section 2182 Federal Flight Deck Officer Weapon Carriage Pilot Program

This section creates a Federal Flight Deck Officer ("FFDO") Weapon Carriage Pilot Program that will allow pilots participating in the FFDO program to transport their firearms on their persons. After one year, the section requires the TSA to evaluate the safety record of the pilot program. It also directs that only if the safety level obtained under the pilot program is comparable to the safety level determined under existing methods of pilots carrying firearms on aircraft, should the TSA allow all pilots participating in the FFDO Program the option of carrying their firearm on their person (subject to such TSA requirements determined appropriate).

Section 2183. Registered Traveler Program

This section directs TSA to expedite implementation of the registered traveler program.

Section 2191. Grand jury information sharing

Section 895 of Public L. No. 107–296, enacted on October 26, 2001, was subsequently affected by a rule change by the Supreme Court. According to the Historical Notes of the Federal Criminal Code and Rules on page 51, "Section 895 of Pub. L. No. 107–296, which purported to amend subdivision (e) of this rule, failed to take into account the amendment of this rule by Order of the Supreme Court of the United States dated April 29, 2002, effective December 1, 2002, and was therefore incapable of execution." This section

makes the technical changes to address this rule change and ensures that the intent of Congress to improve information sharing is carried through.

Section 2192. Interoperable Law Enforcement and Intelligence Data System

Section 2192 enhances interoperability among law enforcement and intelligence agencies and provides clear direction to the NID to facilitate the implementation of a horizontal system to enhance information sharing.

Section 2193. The improvement of intelligence capabilities of the Federal Bureau of Investigation

This section codifies the recommendations of the Commission as they relate to FBI intelligence capabilities. These recommendations form the basis of reforms that have already been implemented or are about to be implemented at the FBI.

TITLE III—BORDER SECURITY AND TERRORIST TRAVEL

Section 3001. Verification of returning citizens

The section would require that by October 2006 all U.S. citizens returning from the Western Hemisphere other than Canada and Mexico must present U.S. passports. In the interim, U.S. citizens would have to present a document designated by the Secretary of Homeland Security. For U.S. citizens returning from Canada and Mexico, the Secretary of Homeland Security would have to designate documents that are sufficiently secure.

Section 3002. Documents required by aliens from contiguous countries

The section would require that by the beginning of 2007, aliens claiming to be Canadian who seek to enter the U.S. must present a passport or other secure identification.

Section 3003. Strengthening the Border Patrol

The section would authorize an increase of 2,000 agents in the Border Control agents a year for each of the next five years.

Section 3004. More immigration investigators

The section would increase the number of ICE investigators enforcing the immigration laws by 800 per year for each of the next five years. One half of the new investigators would be dedicated to enforcing employer sanctions and removing illegal aliens from the workplace. At least three of these new investigators each year must be assigned to each state.

Section 3005. Prevention of improper use of foreign identification

The section would bar all federal employees from accepting identification cards presented by aliens other than documents issued by the Attorney General or the Secretary of Homeland Security under the authority of the immigration laws, or unexpired foreign passports.

Section 3006. Expedited removal for illegal aliens

The section would require DHS to use expedited removal in the case of all aliens who have entered the U.S. illegally and have not been present here for five years.

Section 3007. Limit asylum abuse by terrorists

The section would clarify that the burden of proof is on the applicant in an asylum case. The testimony of the applicant may be sufficient to sustain such burden without corroboration, but only if it is credible, persuasive, and refers to specific facts that demonstrate that the applicant is a refugee. Where it is reasonable that an applicant would present corroborating evidence, such evidence must be provided unless a reasonable explanation is given as to why such information is not provided. No court shall reverse a determination made by an immigration judge or BIA with respect to the availability of corroborating evidence unless the court finds that a reasonable adjudicator is compelled to conclude that such corroborating evidence is unavailable.

The section would provide a nonexhaustive list of factors that an immigration judge can consider in assessing credibility, such as the demeanor, candor, or responsiveness of the applicant or witness, the consistency between the applicant's or witness's written and oral statements, whether or not under oath, made at any time to any officer, agent, or employee of the United States, the internal consistency of each such statement, the consistency of such statements with the country conditions in the country from which the applicant claims asylum, as presented by the Department of State, and any inaccuracies or falsehoods in such statements.

Finally, the section would overturn the doctrine of imputed political opinions by requiring that an asylum applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be the central motive for persecuting the applicant.

Section 3008. Revocation of visas

The section would allow the government to deport a nonimmigrant alien whose visa has been revoked. It would also allow DHS to revoke a nonimmigrant visa petition that has been granted for an alien in the U.S.

Section 3009. Streamlined removal process

The section would modify the judicial review of removal orders available to aliens as follows: for criminal aliens and aliens who are not permanent residents, review would be only in the circuit court and the scope of review would be limited to (1) whether the individual is an alien, (2) whether he is deportable under the Immigration Naturalization Act ("INA"), (3) whether he was ordered to be removed under the INA, and (4) whether he meets the criteria for withholding of removal or Torture Convention protection. For noncriminal lawful permanent resident aliens, review would only be in the circuit court and would be available for all non-discretionary determinations.

Sections 3031–3032. No bar to removal for terrorists and criminal aliens

These sections would modify the regulations implementing the Convention Against Torture by providing that aliens who have engaged in Nazi persecution or genocide, terrorist aliens, aliens who have been convicted of particularly serious crimes and are thus a danger to the community of the U.S., aliens who committed serious crimes outside the U.S., and aliens there are reasonable grounds to believe are a danger to the security of the U.S., would not be eligible for relief from removal.

Section 3033. Removal of aliens

This section would move the authority for designating a country of removal to the Secretary of DHS, and give the Secretary more power to remove an alien to a specific country. It would also allow the Secretary to remove an alien to a country of which the alien is a citizen or national unless the country prevents the alien from entering.

Section 3041. Bringing in and harboring certain aliens

This section would increase criminal penalties for alien smuggling and have the Secretary of DHS develop and implement an outreach program to educate the public in the U.S. and abroad about the penalties for illegally bringing in and harboring aliens.

Section 3052. Minimum document requirements and issuance standards for Federal recognition

This section requires that, for a state driver's license or identification card to be acceptable for federal purposes, States must certify to the Secretary of DHS, within 3 years, that they have met specified standards for data elements, source documents, and security. This section prohibits States from providing a driver's license to an applicant holding a driver's license issued by another State without confirmation from the other State that the individual is terminating or has terminated the driver's license

Section 3054. Trafficking in authentication features for use in false identification documents

This section amends Title 18 to make it a federal crime to traffic in or use security features designed to prevent tampering, counterfeiting, or duplication of identity documents.

Section 3081. Studies on worldwide machine-readable passports and worldwide travel history database

The section would require the Department of State's Office of Visa and Passport Control and the GAO to each conduct a study on the feasibility, cost and benefits (in terms of tracking terrorist travel and apprehending potential terrorists) of: (1) requiring all passports to be machine-readable, tamper-resistant and with biometric identifiers; and (2) the creation of a database containing a record of all entry and exit information so that border and consular officials may ascertain the travel history of the visitor or a prospective entrant. This requirement would allow consular officers and immigration inspectors to ascertain the travel history of any U.S.

citizen or foreign visitor seeking to enter the United States, even if that entrant has a new passport.

Section 3082. Expanded pre-inspection at foreign airports

Currently, DHS inspects passengers who are traveling to the U.S. at 14 foreign airports instead of inspecting them at ports of entry in the U.S. The section would expand this program to include up to an additional 25 airports. In addition, the current selection criteria for pre-inspection locations are based on reducing the number of aliens who arrive to the United States who are inadmissible. The section would provide that the selection criteria should also include the objective of preventing the entry of potential terrorists. The additional locations should be operational by January 1, 2008.

Section 3083. Immigration security initiative

The Immigration Security Initiative is a DHS-operated program that assists airline personnel at foreign airports in identifying fraudulent travel documents. Currently, the program is in place in only two foreign airports. The section expands the program to at least 50 foreign airports by December 31, 2006.

Section 3084. Responsibilities and functions of consular officers

This section would increase the number of consular officers by 150 per year for fiscal years 2006 to 2009, place limitations on the use of foreign nationals to screen nonimmigrant visa applicants by stating that all applications shall be reviewed and adjudicated by a U.S. consular officer, require that the training program for consular officers include training in detecting fraudulent documents and working directly with DHS immigration inspectors at ports of entry, and require the Secretary of State to place anti-fraud specialists in the one hundred posts that have the greatest frequency of presentation of fraudulent documents.

Section 3085. Increase in penalties for fraud and related activity

This section amends 28 U.S.C. § 1028 to increase penalties for the possession and transfer of fraudulent government identification documents, including fraudulent U.S., state, and foreign government documents.

Section 3086. Criminal penalty for false claim to citizenship

This section would make it a violation of law to make a false claim of citizenship in order to enter or remain in the United States.

Section 3088. International agreements to track and curtail terrorist travel through the use of fraudulently obtained documents

This section requires the President to lead efforts to reach international agreements to track and stop international travel by terrorists through the use of lost, stolen or falsified documents. The international agreements should include the establishment of a system to share information on lost, stolen and fraudulent passports and the sharing of this information by governments with officials at ports of entry. In addition, this section calls on the U.S. to continue to support efforts at the International Civil Aviation Asso-

ciation to strengthen the security features of passports and other travel documents.

Section 3090. Biometric entry and exit data system

This section requires the Secretary of DHS to develop a plan to accelerate the full implementation of the requirement of an automated entry and exit data system at U.S. ports of entry and to implement a plan to expedite the processing of registered travelers at ports of entry.

Section 3091. Enhanced responsibilities of the Coordinator for Counterterrorism

This section states that it shall be the policy of the U.S. to make combating terrorist travel and those who assist them a top priority for U.S. counter-terrorism policy. It also adds additional responsibilities to the Coordinator for Counter-terrorism at the State Department (S/CT) so that the issues of terrorist travel and facilitation are added to the portfolio of responsibilities under S/CT.

Section 3092. Establishment of Office of Visa and Passport Security in the Department of State

This section would establish an Office of Visa and Passport Security within the Department of State. It would require the development of a strategic plan in coordination with DHS to target and disrupt individuals and organizations involved in document fraud, raising the profile of these types of crimes and their links to terrorism.

Section 3104. Technology acquisition and dissemination plan

This provision requires DHS to ensure the sharing of terrorist travel intelligence and other information within the many DHS elements and between DHS and other elements of the IC; it also requires DHS to establish a program focused on terrorist travel analysis, training, and technology deployment for front-line border and consular personnel.

TITLE V—GOVERNMENT RESTRUCTURING

Sections 5001–5010. Faster and smarter funding for first responders

This section requires DHS to allocate homeland security assistance funds to States or regions based upon the degree to which they would lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure. Second, it reduces the current State minimum and restructures the allocation process. Under the current system, none of the funds available under the State Homeland Security Grant Program are allocated on the basis of risk. Instead, each State first receives a base amount equal to 0.75 percent of the total, and then an additional amount based solely on population. Under these sections, in contrast, DHS must first allocate all funds based on risk, and then provide, if necessary, additional funds to those States, territories, or certain Indian tribes that have not met a significantly reduced minimum threshold of funding. Under this scheme, 99% of the money will be allocated strictly on the basis of risk.

Section 5021. Government reorganization authority

The Committee added Section 5021, which is based on H.R. 4108, the "High Risk Nonprofit Security Enhancement Act of 2004." This section would authorize the Secretary of Homeland Security to provide $100 million in security assistance to 501(c)(3) organizations that demonstrate they are at a high risk of a terrorist attack based upon specific threats of international terrorist organizations; prior attacks against similarly situated organizations by international terrorists; the vulnerability of the specific site; the symbolic value of the site as a highly recognized American institution; or the role of the institution in responding to terrorist attacks. After the funds have been expended for the highest risk institutions, federal loan guarantees would be available to make loans available on favorable terms. Funds would be administered by a new office in the Department dedicated to working with high-risk non-profits.

Sections 5041–5045. Appointments process reform

This section seeks to improve the Presidential appointment process and allow a newly elected President to submit nominations to the Senate for Presidential appointments to National Security-related positions as expeditiously as possible. The Presidential appointments process is unnecessarily long, burdensome and complex.

Sections 5051–5054. Federal Bureau of Investigation revitalization

The Commission recommended that the FBI needed to develop a specialized workforce with deep expertise in intelligence and national security. Section 5051 adds 5 years to the mandatory retirement age for certain employees. Section 5052 allows for retention and relocation bonuses to be paid to employees with unique skills or qualifications that would leave the service but for such bonus. Section 5053 creates a "reserve service" that would call upon retired employees with specializations that would create a "surge capacity" during times of emergency. Section 5054 would give the FBI flexibility with pay issues in staffing critical positions the new Intelligence Directorate.

Section 5091. Requirement that agency rulemaking take into consideration impacts on individual privacy

Section 5091 requires a federal agency to prepare a privacy impact analysis for proposed and final rules and to include this analysis in the notice for public comment issued in conjunction with the publication of such rules.

Section 5092. Chief privacy officers for agencies with law enforcement or anti-terrorism functions

Section 5092 directs the head of each Federal agency with law enforcement or anti-terrorism functions to appoint a chief privacy officer with primary responsibility within that agency for privacy policy. The provision requires the chief privacy officer to ensure that personally identifiable information is protected and to file annual reports with Congress on the agency's activities that affect privacy, including complaints of privacy violations.

Section 5093. Data mining

This section requires the head of each department or agency of the federal government that is engaged in any activity to use or develop data mining technology to submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official. This amendment establishes criteria for the content of the report and requires that it be submitted within 90 days after enactment of this legislation and requires that it be updated each year.

Section 5094. Privacy and civil liberties oversight board

Section 5094 establishes an Independent Privacy and Civil Liberties Oversight Board in the Executive Branch of the Federal Government. The purpose of the Board is to: (1) analyze and review actions the Executive Branch takes to protect the Nation from terrorism as such actions pertain to privacy or civil liberties; and (2) ensure that privacy and civil liberties concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism. Specifically, the Board must review the privacy and civil liberties implications of legislation, regulations, and related matters and advise the Executive Branch regarding the need to ensure that privacy and civil liberties are appropriately considered in their development and implementation. With respect to providing advice on proposals to retain or enhance a particular governmental power, the Board must consider whether the executive department or agency has explained how the power actually materially enhances security and if there is adequate supervision of the Executive Branch's use of the power to ensure protection of privacy and civil liberties. The provision specifies the Board's oversight responsibilities with respect to information sharing activities of Federal agencies.

The Board is comprised of a chairman and four members, all of whom are appointed by the President, by and with the advice and consent of the Senate. Not more than three members of the Board may be of the same political party. Board members are to be selected solely on the basis of their professional qualifications, achievements, public stature, and relevant experience, without regard to political affiliation, and have extensive experience in the areas of privacy and civil rights and liberties. A Board member may not, while serving on the Board, be an elected official, an officer, or an employee of the Federal Government, other than in the capacity as a member of the Board. Although initially appointed on a staggered basis, Board member is appointed for a six-year term.

Section 5094 specifies that the Board must periodically submit, not less than semiannually, reports to Congress and the President that describe its major activities and information on the Board's findings, conclusions, and recommendations resulting from its advisory and oversight functions. Section 5094 authorizes Board Members to testify before Congress. With respect to the public, section 5094 requires the Board to hold public hearings, release public reports, and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information, applicable law, and national security. Subject to an exception for national security, the provision requires a Federal de-

partment or agency to supply information upon request of the Board. Section 5094 specifies that the Board is an agency and not an advisory committee. In addition, the Board is authorized to be appropriated such sums as may be necessary to carry out this section.

Section 5101. Short title

This section provides that this chapter may be cited as the "Mutual Aid and Litigation Management Authorization Act of 2004."

Section 5102. Mutual aid authorized

The mutual aid provisions enable states to enter into mutual aid agreements to provide mutual aid in response to emergencies and to allow their first responders to carry with them into other states the liability regime of their home states. The mutual aid provisions also provide that, for parties to a mutual aid agreement, the worker's compensation and death benefits of first responders who answer calls in other party states, and the home state rules that govern them, also follow them into other states. The mutual aid provisions also provide that, for parties to a mutual aid agreement, whenever any person holds a certificate issued by a responding party that evidences the meeting of professional standards, such person shall be deemed so certified by the requesting party to provide assistance under the mutual aid agreement.

Section 5103. Litigation management agreements

This section includes provisions that allow states to enter into "litigation management agreements" in which they could agree that, in the event first responders from several states respond to a terrorist attack in another state, they could decide on the liability regime that would apply in that circumstance to claims brought against their first responders, including putting any such claims in federal court, a ban on punitive damages, and a collateral source offset rule (that would prevent double recoveries for the same injury).

Section 5104. Additional provisions

This section provides that nothing in this chapter abrogates any immunities from liability that any party may have under any other state or federal law. This section exempts law enforcement security operations at special events of national significance under 18 U.S.C. § 3056(e) or other law enforcement functions of the U.S. Secret Service. This section also provides that the Secret Service shall be maintained as a distinct entity within the Department of Homeland Security and shall not be merged with any other department function.

CHANGES IN EXISTING LAW BY THE BILL, AS REPORTED

Because of the short time the Committee had to prepare this report and the length of the bill, the Office of the Legislative Counsel was not able to provide the Committee materials to comply with clause 3(e) of rule XIII of the Rules of the House of Representatives. The Committee is seeking authority to file a supplemental report in which these materials would be included.

MARKUP TRANSCRIPT

Because of the short time the Committee had to prepare this report and the length of the bill, the Committee was not able to prepare a transcript of its markup of H.R. 10. The Committee is seeking authority to file a supplemental report in which the transcript would be included.

DISSENTING VIEWS

While we support implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission"), we dissent from H.R. 10 because it does not accomplish that goal. The 9/11 Commission reached across the partisan divide and arrived at unanimous recommendations to improve the security of the United States. Ten members, five Democrats and five Republicans, held countless hearings and issued a well-written report with well-reasoned recommendations.[1] The Senate, almost evenly split between Republicans and Democrats, has taken up bipartisan legislation to implement those recommendations.

We had hoped the House would follow the example set by the Commission and by the Senate; instead, the Republican leadership has put before us this bill drafted only with Republican input and sponsored only by Republicans. Unfortunately, when Ranking Member John Conyers (D–MI) along with Reps. Jerrold Nadler (D–NY), Bobby Scott (D–VA), Sheila Jackson Lee (D–TX), William D. Delahunt (D–MA), and Adam Schiff (D–CA) reached across the aisle to offer the bipartisan Senate bill at the markup, it was rejected on a party-line basis.[2]

Because of the political nature by which it was drafted, it is no surprise that H.R. 10 is deeply flawed. First of all, it fails to incorporate numerous recommendations of the 9/11 Commission that would significantly advance our national security. For instance, H.R. 10 does not include Commission recommendations to provide strong budgetary authority for the newly-created National Intelligence Director, protect civil liberties through the creation of an effective civil liberties board, or address the need for congressional reform. As a matter of fact, in its present form, H.R. 10 fails to implement the vast majority of the 9/11 Commission recommendations—of the Commission's forty-one recommendations only eleven are fully implemented, sixteen are not implemented at all and fourteen are incomplete.[3]

At the same time, the legislation contains provisions not recommended by the Commission that would do little, if anything, to protect our homeland. Most notably, the legislation makes massive, anti-immigrant changes to our immigration laws (based in most cases on thin and tangential references in a Commission staff report that were not even included in the final report of the 9/11 Commission), and creates major new law enforcement and data

[1] National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report (July 22, 2004) [hereinafter 9/11 Commission Report].

[2] Markup of H.R. 10, House Comm. on the Judiciary, 108th Cong., 2d Sess. (Sept. 29, 2004) [hereinafter H.R. 10 Markup].

[3] See Report Card on H.R. 10 prepared by Democratic Staff of the Select Committee on Homeland Security.

programs that significantly impairs our civil rights and civil liberties.

It is these very provisions that the 9/11 Commission has urged the House Republicans to drop from their legislative effort. The 9/11 Chairman stated recently that "We're very respectfully suggesting that provisions which are controversial and are not part of our recommendations to make the American people safer perhaps ought to be part of another bill at another time."[4] Vice Chairman Lee Hamilton specifically criticized the extraneous immigration provisions and stated, "we respectfully submit that consideration of controversial provisions at this late hour can harm our shared purpose of getting a good bill to the President before the 108th Congress adjourns."[5]

That is why H.R. 10, or provisions within it, are opposed not only by 9/11 Commission leaders[6] and the White House[7] but also organizations concerned with:

(1) state prerogatives (the National Governors Association[8] and the National Conference of State Legislatures[9]);

(2) the fair administration of justice (the American Bar Association ("ABA"),[10] the American Civil Liberties Union ("ACLU"),[11] the Association of the Bar of the City of New York[12]);

(3) the rights of immigrants (ACORN; American-Arab Anti-Discrimination Committee; American Jewish Committee; American Immigration Lawyers Association ("AILA"); Arab-American Institute; Center for Community Change; Fair Immigration Reform Movement; Hebrew Immigrant Aid Society; Lutheran Immigration and Refugee Service; National Asian Pacific American Legal Consortium ("NAPALC"); National Council of La Raza; National Immigration Forum; Service Employees International Union, AFL–CIO, CLC; and the Tahirih Justice Center)[13]; and

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[4] Jesse J. Holland, 9/11 Panel Urges House GOP to Drop Certain Parts of Bill, Assoc. Press, Sept. 30, 2004.

[5] Id.

[6] Carl Hulse, 9/11 Commissioners Say Bill's Added Provisions are Harmful, N.Y. Times, Oct. 1, 2004, at A13.

[7] Letter from Alberto R. Gonzales, Counsel to the President, The White House, to Editors of the Washington Post (Oct. 1, 2004).

[8] Letter from Raymond C. Scheppach, Executive Director, National Governors Association to the Honorable Thomas M. Davis, Chairman, and the Honorable Henry A. Waxman, Ranking Member, U.S. House Comm. on Government Reform (Sept. 29, 2004) [hereinafter NGA Letter].

[9] Letter from Maryland Delegate John Hurson, President of the National Conference of State Legislatures, and Illinois State Senator Steve Rauschenberger, President Elect of NCSL to the Honorable Thomas M. Davis, Chairman, and the Honorable Henry Waxman, Ranking Member, U.S. House Comm. on Government Reform (Sept. 28, 2004) [hereinafter NCSL Letter].

[10] Statement of Robert J. Grey, Jr., President, American Bar Association (Sept. 30, 2004) [hereinafter ABA Statement].

[11] Letter from Timothy H. Edgar, Legislative Counsel, American Civil Liberties Union, to Interested Persons (Sept. 23, 2004) [hereinafter ACLU Letter].

[12] Statement of Association of the Bar of the City of New York Regarding H.R. 10 (Sept. 30, 2004) ("We urge the House not to enact H.R. 10 and to provide a reasonable opportunity for broad public debate on its recommendations before taking any action.") [hereinafter ABCNY Statement].

[13] Letter from ACORN et al., to U.S. Representatives (Sept. 28, 2004) [hereinafter Immigration Sign-On Letter].

(4) adherence to international law (Amnesty International, Human Rights First, Human Rights Watch,[14] and the United Nations High Commissioner for Refugees[15]).

I. THE IMMIGRATION AND RELATED CHANGES ARE UNFAIR, UNFOUNDED, AND UNNECESSARY

A. THE LEGISLATION WOULD AUTHORIZE DEPORTATION TO COUNTRIES WHERE TORTURE IS LIKELY TO OCCUR

A primary concern with this legislation is that it would require our government to outsource torture, make it difficult for aliens to seek refuge from torture, and violate our international obligations. Section 3032, which was not recommended by the 9/11 Commission and is not supported by the President,[16] would retroactively exclude classes of aliens from protection under the United Nations Convention Against Torture ("CAT") by permitting the Department of Homeland Security to remove to state sponsors of torture any alien it reasonably believes may be a danger to the United States. The Association of the Bar of the City of New York notes that this provision "would * * * mandate the deportation of * * * an individual to a country even if it is certain that the individual would be tortured there."[17]

This provision also would make it more difficult to establish eligibility for CAT relief. Instead of being able to meet the present burden of proof, which is "more likely than not," the bill would require applicants to prove by "clear and convincing evidence" that they would be tortured if they are deported to the country from which they are seeking relief. Section 3032 also would prohibit federal court challenges to a decision removing CAT protection under the new law except as part of the review of a final order of removal.

The section 3032 exceptions permitting "extraordinary rendition" are in clear violation of our obligations under the Convention. Article 3 of the Convention absolutely forbids a State Party from forcibly returning any person to a country when there are substantial grounds for believing that the person would be in danger of being subjected to torture.[18] In fact, no less an authority than the United

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[14] Letter from Amnesty International, Human Rights First, and Human Rights Watch, to U.S. Representatives (Sept. 29, 2004) [hereinafter International Sign-On Letter].

[15] Letter from Kolude Doherty, Regional Representative, U.N. High Commissioner for Refugees, to the Honorable John Conyers, Jr., Ranking Member, U.S. House Comm. on the Judiciary (Sept. 29, 2004) [hereinafter UNHCR Letter].

[16] White House Letter:

> Yesterday's Washington Post inaccurately reported that the Bush Administration supports a provision in the House intelligence reform bill that would permit the deportation of certain foreign nationals to countries where they are likely to be tortured.
>
> The President did not propose and does not support this provision. He has made clear that the United States stands against and will not tolerate torture, and that the United States remains committed to complying with its obligations under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Consistent with that treaty, the United States does not expel, return, or extradite individuals to other countries where the United States believes it is likely they will be tortured. Id. (emphasis in original).

[17] ABCNY Statement at 1–2.

[18] It is worth noting that, in ratifying the treaty, the U.S. Senate did not express any reservation, understanding, or proviso that might exclude a person from the Article 3 prohibition. Moreover, while the Convention prohibits sending them back to their home countries, the prohibition is country specific. It does not bar sending them to other countries. Also, although the grant of CAT protection is absolute, it is not permanent relief. It can be removed when the conditions in the home country change so as to eliminate the risk of torture.

Nations High Commissioner for Refugees has written of its concern that "the proposed exception to protection under the [CAT] will authorize the return of individuals to countries where they may suffer torture and will place the U.S. in violation of its international obligations."[19]

Regardless of the applicability of the CAT, we believe an absolute prohibition on removal to torture-practicing nations is necessary on moral grounds, as well. Torture is so horrendous and so contrary to our ethical, spiritual, and democratic beliefs that it must be condemned and prohibited. Returning someone to a place where he or she would be tortured would sustain the kind of system in which violent authoritarian regimes exist. Passing the section 3032 provisions would amount to legalizing the outsourcing of torture by the United States government. The President of the American Bar Association further indicated that extraordinary rendition may endanger "American troops who may be detained by adversaries who may be disinclined to honor international obligations in light of the U.S. government's failure to honor its own."[20]

We also object to the change in the burden of proof that would require the applicant to prove by "clear and convincing evidence" that he will be tortured. This is an unrealistic and unfair requirement. Raising the standard to this level of certainty would undoubtedly result in sending people to countries where they will be tortured. Moreover, it would violate Article 3 of the Convention, which forbids a State Party from forcibly returning a person to a country where there are "substantial grounds" for believing that he would be in danger of being subjected to torture.

Finally, we object to making such changes retroactive and prohibiting federal court review of CAT decisions unless it is part of the review of a final order of removal. Current law requires that petitions for review of a removal order be filed within 30 days.[21] Changing the standards and applying the changes retroactively puts individuals who have already won CAT relief in the position of reproving their cases with evidence that may no longer exist. These same individuals are likely to find themselves with no opportunity for federal court review of adverse decisions, which would eliminate the checks and balances that are the fundamental component of our democracy. This cannot be justified where the consequence of a mistake could be subjecting a person to torture.

These concerns are not merely hypothetical. In 2002, the United States deported Mr. Maher Arar, a Canadian-Syrian national, to Syria, a known state sponsor of torture.[22] Mr. Arar, now in Canada, was apparently tortured during his ten months in Syria. In another instance, a Virginia couple is suing the United States seeking to have their son, Ahmed Abu Ali, returned to the United States from Saudi Arabia, where he was arrested in June 2003; in their petition, the couple argue that their son's situation is an example of extraordinary rendition.[23]

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[19] UNHCR Letter at 4.
[20] ABA Statement.
[21] U.S.C. § 1252(b).
[22] Carlye Murphy, Va. Couple File Lawsuit to Free Their Son Held in Saudi Arabia, Wash. Post, July 29, 2004, at A8. Mr. Arar has sued the United States government for his ordeal.
[23] Id.

It is important to note that prohibiting the removal of someone to state sponsors of torture does not mean that they must be released. The Supreme Court has held that people who receive CAT protection can be held in detention if they pose a danger to the United States.[24] In response to the Court, the former Immigration and Naturalization Service promulgated regulations for determining the circumstances under which an alien may be held in custody beyond the statutory removal period.[25] Pursuant to the Court's decision and the INS regulations, it is clear that removal to state sponsors of torture is not necessary to fight terrorism.

The Convention Against Torture is a fundamental pillar of our human rights and national interest policy. It prohibits the government from establishing removal and extradition processes that would return aliens to countries where they would be tortured. It is one of the four primary international human rights documents. It stands, along with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Genocide Convention, as one of the cornerstones of our country's efforts to stop the most heinous forms of oppression and abuse. That is why we, and the leaders of the 9/11 Commission,[26] oppose this egregious proposal to weaken our enforcement of it.[27]

B. The Legislation Would Hinder Efforts to Grant Asylum to Victims of Torture

We oppose inclusion of section 3006 in H.R. 10 because it is not a part of the 9/11 Commission recommendations, and it would eviscerate protections built into the asylum process to ensure that the United States does not return genuine refugees to countries where they would face persecution and violate both the Refugee Convention and the Convention Against Torture. Section 3006 significantly expands the policy of expedited removal—a process that allows low-level immigration officials to remove undocumented foreigners without a hearing before an immigration judge. Before Congress has held hearings to assess the impact of this expansion of expedited removal, section 3006 would push the Department of Homeland Security to expand expedited removal to apply to all undocumented foreigners anywhere in the country unless they have been present in the United States for more than five years.

Under current law, expedited removal applies to non-citizens arriving at an airport or land border with invalid travel documents, and allows an immigration officer to order them removed without

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[24] In *Zadvydas* v. *Davis,* 533 U.S. 678 (2001), the Supreme Court held that the detention provisions in the Immigration and Nationality Act, red in light of the Constitution's demands, limit an alien's post-removal period detention to a period reasonably necessary to bring about the alien's removal from the United States. The Court found further that once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute except where special circumstances justify continued detention.

[25] 8 C.F.R. §§ 208.16–208.18. These regulations authorized the government to continue to detain aliens who present foreign policy concerns or national security and terrorism concerns, as well as individuals who are specially dangerous due to a mental condition or personality disorder, even though their removal is not likely in the reasonably foreseeable future.

[26] Carl Hulse, 9/11 Commissioners Say Bill's Added Provisions are Harmful, N.Y. Times, Oct. 1, 2004, at A13 ("Commission leaders did not specify all of the House provisions that they considered problematic, though they singled out a proposal to allow suspected terrorists to be deported to nations where they could be tortured.")

[27] The Majority rejected by a vote of 12–19 an amendment offered by Rep. Sheila Jackson Lee to strike section 3032.

further review unless they express a fear of persecution or torture. People who express a fear of persecution or torture are to be referred to an asylum officer for a "credible fear" interview, and must pass this interview in order to be eligible for asylum in the United States. The current statute also allows expedited removal to be applied to non-citizens who are found inside the United States without having been admitted or paroled and who cannot show that they have been here for more than two years. The current statute does not require such persons to be subjected to expedited removal, however, and gives the Secretary of Homeland Security the power to apply expedited removal to that group or to any sub-group of people within it. These existing provisions already place significant power in the hands of immigration officers whose decisions are not subject to formal administrative or judicial review.

Section 3006 goes much further and would allow DHS to summarily deport genuine refugees who have been in the United States for over a year, even if they qualify for a statutory exception to the one-year deadline to file for asylum without having their cases heard.[28] The expansion of expedited removal powers in section 3006 allows for summary deportation of immigrants who express a fear of persecution or an intent to apply for asylum but appear ineligible for asylum based on the one-year deadline. This bill ignores the fact that such applicants may fall under a statutory exception to the one-year deadline based on extraordinary circumstances or changed circumstances.[29]

Under section 3006, DHS would also summarily deport genuine refugees who are ineligible for asylum based on the one-year deadline but are eligible for withholding of removal under INA section 241(b)(3). Stripping refugees of the opportunity to claim that protection violates our obligations under Article 33 of the Refugee Convention. This is because even asylum applicants who file more than one-year after arrival and cannot qualify for an exception to the one-year deadlines should remain eligible for withholding of removal if they can show that they are refugees and would face a probability of persecution if deported. Withholding of removal is the basic minimum form of protection through which the United States ensures its compliance with its obligation under international law not to return refugees to countries where their lives or freedom would be threatened. If an immigration officer thinks an intending asylum-seeker has been here for more than one year but less than five, section 3006 does not provide for any investigation or review of the person's eligibility for withholding.

In addition to being a threat to relief for genuine refugees under asylum and withholding of removal, section 3006 would allow the return under expedited removal of non-citizens determined to have been in the United States for less than five years who would face torture when deported. This section provides no means for persons

[28] Section 208 of the Immigration and Nationality Act allows refugees present in the United States to file for asylum, but provides that they must do so within one year of their last arrival in the United States.

[29] A classic example of the latter would be where a person came to the United States as an economic migrant two years ago, but learned last month that following a coup in his country all his family had been killed due to their allegiance with the prior regime. This person's eligibility for an exception to the filing deadline needs to be considered by a trained asylum officer or an immigration judge. Under section 3006, it would never be considered at all.

subject to expedited removal who fear they will be tortured if they are deported to make an application for protection under the Convention Against Torture. The bill provides for referral to an asylum officer only for those who express an intention to apply for asylum or a fear of persecution. This omission sets the stage for very serious violations of the U.S.'s obligation under the CAT not to return people to countries where they would be tortured.

This massive expansion of expedited removal would also be likely to affect even more people than it seeks to target, because it is difficult for a person who has just been arrested by an immigration officer unexpectedly to prove that he or she has been in the United States for more than five years, or for less than one year so as to qualify for referral to an asylum officer. Most people who are present in the U.S. without admission do not walk around with five years' worth of rent receipts in their pockets. In the asylum context, proving one's date of entry typically takes some time and effort, and involves gathering documentation and witnesses-none of which can be accomplished in an expedited removal proceeding.

Finally, we do not believe that expanding the use of expedited removal in this way is the most efficient way to stop more terrorists trying to enter the United States. Expedited removal would not have stopped the terrorists who executed the 9/11 attacks. Moreover, expedited removal is the last option we ought to want as a defense against terrorists trying to gain entry, because essentially what it does is sends them out only to try to enter again somewhere else. The danger of relying on expedited removal to catch terrorists is that its focus is removal. Suspected terrorists should not be removed; they should be interrogated and charged.

Section 3007 is equally problematic. While current law already bars terrorists from seeking asylum, this section would allow genuine refugees to be denied asylum if they were unable to document relevant conditions in their countries through State Department reports, could not prove their persecutor's central motive for harming them, or had any inconsistencies between statements made to any U.S. government employees, whether written or oral and whether or not under oath, and there testimony before an immigration judge. There are key changes in this section that create insurmountable hurdles for individuals seeking safe haven in the United States.

Section 3007 would require an asylum applicant to prove that her persecutor's central motive in persecuting her was or would be her race, religion, political opinion, nationality or membership in a particular social group. While committing torture, rape, beatings, and other abuses, persecutors do not always explain themselves clearly to their victims. This is why the Board of Immigration Appeals has ruled that asylum applicants are not required to show conclusively why persecution has or will occur.[30] This bill would reverse that decision and place an enormous and unnecessary burden on asylum seekers by requiring them to prove with unrealistic precision what is going on in their persecutor's mind.

[30] In Matter of S-P-, 21 I&N Dec. 486 (BIA 1996). The case involved a Sri Lankan who was tortured by his government purportedly to ascertain information about the identities of guerrillas and the location of camps, but also because of an unstated assumption by his torturers that his political views were antithetical to the government.

This section would permit adjudicators to deny asylum because the applicant is unable to provide corroborating evidence of "certain alleged facts pertaining to the specifics of their claim." This disproportionately harms applicants who are detained and/or lack counsel. In addition, section 3007 would bar judicial review of a denial of asylum based on an applicant's failure to provide corroborating evidence.

Section 3007 also introduces new credibility grounds for denying asylum, saying that the applicant's "demeanor" and other highly subjective factors may be determining factors in assessing credibility. Demeanor is highly cultural and should not be relied on as heavily as evidence.[31] Moreover, torture victims often have what mental health professionals call a "blank affect" when recounting their experiences, a demeanor that an adjudicator might misinterpret as demonstrating lack of credibility.

Additionally, it may be difficult for asylum applicants to recount their experiences, and even more troubling based upon the situation. Survivors of torture, such as rape, or forced abortion or sterilization may not be comfortable telling this information to a uniformed male inspection officer in an airport. Also, applicants in that setting may not be provided with appropriate interpreters. They may understandably fear discussing problems in their home countries in any detail until later in the process when it is made clear to them that they are not going to be sent back to their home countries without their claims being heard. Several courts of appeals even have emphasized that statements taken under such conditions are unreliable.[32]

Section 3007 also allows asylum to be denied for lack of consistency, including with any statement the applicant made at any time to any U.S. official. In order to escape persecution and flee to safety, refugees sometimes need to misrepresent why they are leaving one country and entering another. For reasons of fear, desperation, confusion and trauma they often do not tell the full story or, necessarily, the accurate story. To use an applicant's first statement to any U.S. official to impeach his or her sworn testimony, no matter how well supported, is unreasonable and unfair.

Furthermore, the Refugee Convention definition of a refugee, and its definitive interpretation in the United Nations High Commissioner For Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, do not require and in fact acknowledge that a person seeking refuge "may not be aware of the reasons for the persecution feared." To meet the test that persecution be "on account of" one of the prohibited grounds, it is sufficient to show persecution is motivated in part by one of those grounds. Asking a refugee or asylum applicant to parse his persecutor's motivations so finely as to distill the central motive is ask-

[31] In one culture, looking a judge in the eye would be interpreted as candor, while in another it would be interpreted as contempt; downcast eyes might be interpreted as respect for authority in one culture and evasiveness in another.

[32] Fauyiza Kassindja, the young Togolese woman who fled female genital mutilation (FGM), would have been denied asylum under this standard with little chance of getting that determination reversed on appeal. Under current law, the Board of Immigration Appeals Appeals rightly reversed the Immigration Judge's credibility finding in her case, and that decision has helped protect other women fleeing FGM.

ing asylum seekers to read the minds of their persecutors. Moreover, current Supreme Court case law interpreting the "on account of" requirement is already the strictest in the world without section 3007.

Finally, section 3007 calls for consistency between the applicant's claim and country conditions in the country from which the applicant claims asylum "as presented by the Department of State." This provision could be interpreted to exclude country conditions information from human rights organizations, journalists, and myriad other sources of relevant and reliable information that are not necessarily included in State Department country reports. Although the State Department country reports are usually well researched, they are not an exhaustive and unfailingly accurate source of documentation of all of the wide range of human rights violations around the world that can give rise to valid asylum claims. In addition, since these reports come out annually, they can not be relied upon for documentation of more recent events.

The President has made many strong statements about his concern for the persecuted and America's role in creating a safe haven. On United Nations International Day in Support of Victims of Torture, he said:

> The United States reaffirms its commitment to the worldwide elimination of torture. * * * The United States will continue to take seriously the need to question terrorists who have information that can save lives. But we will not compromise the rule of law or the values and principles that make us strong. Torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere.[33]

In no uncertain terms, sections 3006 and 3007 are inconsistent with the Bush Administration's statements on persecution and torture and will lead to obvious and clear hardship on innocent and deserving immigrants.[34]

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[33] The President, Statement on U.N. International Day in Support of Victims of Torture (June 26, 2004).

[34] The effect of sections 3006, 3007, and 3009 are best illustrated through an actual asylum petition that would have turned out quite differently had sections 3006, 3007, and 3009 been in place. The findings of fact by the appellate court recount that Olimpia Lazo-Majano, a young Salvadoran mother of three, was 29, in 1981, when her husband fled El Salvador for political reasons. Ms. Lazo-Majano remained in El Salvador, working as a domestic. In mid-1982, Ms. Lazo-Majano was hired by a sergeant in the Salvadoran armed forces named Rene Zuniga. After Ms. Lazo-Majano had been working for him for several weeks, Zuniga raped her at gun point. This began a period of abuse during which Zuniga beat Ms. Lazo-Majano, threatened her, tore up her identity card and forced her to eat it, dragged her by the hair in public, held hand grenades against her head, and threatened to bomb her. Ms. Lazo-Majano felt trapped and powerless to resist Zuniga, because he accused her of being a subversive and threatened that if she reported him or tried to resist him, he would denounce her or kill her as a subversive. Ms. Lazo-Majano believed him: she knew a teen-age boy who was believed to have been tortured and killed by the army, the husband of a neighbor had been taken away at night together with a group of other men and killed the preceding year, and numerous young girls who had been raped with impunity.

In late 1982, Ms. Lazo-Majano escaped and fled to the United States, entering the country without inspection. Neither the Immigration Judge who heard her request for asylum nor the Board of Immigration Appeals doubted her credibility. But the Immigration Judge ordered her deported to El Salvador, and the BIA upheld that decision in 1985, on the grounds that "such strictly personal actions do not constitute persecution within the meaning of the Act." Ms. Lazo-Majano appealed to the federal court of appeals. The court of appeals reversed the BIA, holding that Zuniga "had his gun, his grenades, his bombs, his authority and his hold over Olimpia because he was a member" of an army unrestrained by civilian control, that his cynical imputation

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C. THE LEGISLATION UNFAIRLY AND UNCONSTITUTIONALLY LIMITS JUDICIAL REVIEW OF EXECUTIVE ACTIONS

Section 3009 would eliminate virtually all federal court review of orders of deportation, including claims arising under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment. Review of such orders would be limited to "circuit courts of appeals of constitutional claims or pure questions of law raised upon petitions for review filed in accordance with this section."

The bill not only forecloses habeas corpus review in those cases where a "petition for review" is barred under section 242(a)(2) of the Immigration and Nationality Act—it goes much further by redefining "judicial review" and "jurisdiction to review" throughout the INA to include review by habeas corpus. This is a radical departure in immigration law because it changes the longstanding, historical meaning of "jurisdiction to review" and "judicial review"—"terms of art" that have been long interpreted in immigration matters as distinct from review by writ of habeas corpus.[35]

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to her of subversive political opinions, and the danger that he would kill her or have her killed on this basis, qualified her for asylum.

In its decision, the court of appeals in this case noted reports that people being denied asylum and deported from the United States to El Salvador had been tortured and killed. Fortunately for Ms. Lazo-Majano, her deportation was stayed pending the federal court's review. Under section 3009 of H.R. 10, however, the court could not have stayed Ms. Lazo-Majano's deportation unless she were able to show by "clear and convincing evidence"—before briefing or argument in this legally complex asylum case—that execution of the deportation order would be "clearly contrary to law." This is a higher standard than she was required to meet to actually win her asylum case before the court of appeals. Under H.R. 10, Ms. Lazo-Majano would have been deported to El Salvador. The federal court's decision in her favor two years later would do nothing to protect her there.

If section 3007 of H.R. 10 had been law, this case would almost certainly not have been decided in Ms. Lazo-Majano's favor. Section 3007 would require her to establish that she was the wife of someone who fled the country for political reasons, that her persecutor attributed "subversive" political opinions to her, and that his desire to stamp out any resistance to his dominance over her as a man and an officer in the ruling army, were not only the motives of Zuniga's persecution, but that her political opinion was "the central motive" for the persecution. A dissenting judge on the court of appeals in this case took the view that Ms. Lazo-Majano was "abused * * * purely for sexual, and clearly ego reasons" and was therefore not eligible for asylum. If this case were decided under the rule of section 3007, that view would have prevailed.

In fact, if H.R. 10 had been the law, Ms. Lazo-Majano would have been unlikely to have had her asylum claim heard at all—by anyone. Section 3006 expands expedited removal procedures to require the summary deportation, without hearing or review, of anyone who has not been admitted or paroled into the United States and (in the judgment of an immigration officer) has not been physically present in the United States continuously for the past five years. Ms. Lazo-Majano was present in the United States without admission when she was stopped by an immigration officer. Section 3006 provides that a person in this situation who indicates an intention to apply for asylum or a fear of persecution shall be referred to an asylum officer for a credible fear interview. Ms. Lazo-Majano would be allowed to apply for asylum if she was able to tell a uniformed Border Patrol officer (an uniformed and likely male officer) about her fears, but even if she felt safe enough to do that she would only be granted a credible fear interview if the officer determined that she had been present in the United States at that point for less than a year.

In fact, Ms. Lazo-Majano had only been in the United States for a few months when she was stopped. But could she have proved that? She was an undocumented immigrant with no proof of her date of entry and probably very limited documentation of her life in this country. If she had in fact been in the U.S. for over a year, she might have been eligible for an exception to the one-year filing deadline for asylum claims—many refugees who have been through the kind of shattering, traumatic experiences she suffered arrive in the U.S. suffering from psychological and/or physical ills that make it impossible for them to file their claims timely. For many victims of rape and other forms of torture, the continuing feeling of shame and fear are so overwhelming that they may not be able to bring themselves to tell their stories to any other person—much less a U.S. government official—until they have gained some sense of security. People in this situation are often eligible for an exception to the filing deadline under INA section 208(a)(2)(D). Section 3006 would prevent their claims from being heard. Regardless of her date of filing, Ms. Lazo-Majano would be eligible for withholding of removal under section 241(b)(3) of the INA, but section 3006 makes no provision for application for withholding of removal.

[35] *INS* v. *St. Cyr,* 533 U.S. 289, 312 n.35 (2001).

This section would redefine the meaning of these terms to explicitly forbid access to the "Great Writ" for all claims where "judicial review" or "jurisdiction to review" is barred, dramatically altering at least thirteen separate provisions of the Immigration Act that affect agricultural workers, asylum petitioners, non-immigrants and others. In these cases, habeas review must be available as a safety valve. The Constitution demands court review for all actions that affect the liberty of persons detained by the government.

After barring these claims, the legislation explicitly bars the federal courthouse doors to any alternative appeal through the "Great Writ" of liberty. In so doing, the bill violates the Constitution, which provides that "the Privilege of the Writ of Habeas Corpus shall not be suspended" except in cases of "Rebellion or Invasion."[36] The Supreme Court has held that the Constitution requires any substitute remedy for habeas corpus to be "neither inadequate nor ineffective to test the legality of a person's detention."[37]

This proposal ignores many of the other systemic problems that have led to necessary habeas litigation. The current system makes it very hard for many people to get any review, even if they have a strong claim. Factors negating meaningful review include the lack of access to counsel, detentions in remote areas, lack of notice on how to have a claim heard in court, exceedingly short time limitations to file petitions for review, no protection against deportation during the short time to file for review, and the government's use of hypertechnical arguments to defeat jurisdiction. These factors, plus the 1996 legislation's effective elimination of discretionary relief by the agency, have forced people into habeas litigation. The Majority rejected an amendment offered by Rep. Nadler and Rep. Linda Sanchez (D–CA) to strike this objectionable proposal.

D. THE LEGISLATION WOULD REGULATE FORMS OF IDENTIFICATION CONTRARY TO CONGRESSIONAL AND PRIVATE SECTOR VIEWS

The legislation contains problematic provisions that would make it difficult for immigrants to carry identification and open bank accounts, and for states to regulate drivers. Considering that these measures would not help in the war on terror, it is not surprising that they were not recommended by the 9/11 Commission.

First, section 3005 would prohibit federal employees from accepting any foreign identity document other than a passport.[38] The underlying objective is to prevent Mexican immigrants from using Matricula Consular cards for identification. The Government of Mexico has been issuing Matriculas at their consulates around the world for more than 130 years. The consulates do this to create an official record of its citizens in other countries. The Matricula is legal proof of registration with a consulate. This registration facilitates access to protection and consular services because the certificate is evidence of Mexican nationality. Last year alone, more than a million of these cards were issued to Mexican citizens living in

[36] U.S. CONST. art. I § 9.

[37] Swain v. Pressley, 430 U.S. 372, 381 (1977).

[38] The identity document issue would come up when aliens are required to present a foreign identity document to enter a federal building or to board an airplane at a United States airport. In addition, the Transportation Security Administration requires passengers to show an identification card before being admitted to the secured areas of an airport.

the United States. It does not provide immigrant status of any kind, and it cannot be used for travel, employment, or driving in the United States or in Mexico. The Matricula only attests that a Mexican consulate has verified the individual's identity.

The Matricula also has some non-consular uses. For instance, because it is an identification card, it provides Mexican nationals in the United States with access to banking services. Without an acceptable identification card, many Mexican nationals in this country cannot open checking or savings accounts or use any other banking services. The significance of this cannot be overstated; in 2003, Latino immigrants sent $38 billion to Latin America.[39] Moreover, the U.S. banking industry has been supportive of the Matricula, planning to spend at least $8.5 billion through 2005 to attract Hispanic customers.[40]

The availability of banking services is a safety issue, as well. Because of perceptions that Latinos do not have bank accounts and thus carry large amounts of cash, Latinos are more likely to be victims of violent crime than any other racial or ethnic group. As a result of this problem, mayors across the country support the use of the Matricula to enable Latinos to use mainstream financial institutions and thus reduce crime and violence.[41]

Finally, the use of the Matricula for establishing bank accounts has been approved by our government. The USA PATRIOT Act requires regulations setting forth minimum standards for financial institutions that relate to the identification and verification of any person who applies to open an account.[42] These regulations, promulgated by the U.S. Department of Treasury, permit banks to accept identification cards issued by foreign governments from customers opening new accounts, including the Matricula.[43] Additionally, the House recently defeated another attempt to ban the use of the Matricula.[44] Despite this clear support for the Matricula, opponents of the identification card are trying to achieve their objective indirectly by limiting which foreign documents can be accepted.

Section 3052 of the legislation is another thinly-veiled attempt to limit forms of acceptable identification. Subsection 3052(c)(2)(B) would prohibit states from accepting any foreign document, other than an official passport, to meet the documentary identification

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[39] Dr. Manuel Orozco, Institute for the Study of International Migration, Georgetown Univ., Pew Hispanic Center Report: The Remittance Marketplace-Prices, Policy and Financial Institutions 15 (June 2004).

[40] Holders of the Matricula are more likely to use regulated financial institutions, such as banks or credit unions, than a money transmitting business such as Western Union or MoneyGram because the cost of making such transfers is much higher for the latter category.

[41] See Rachel L. Swarns, Old ID Card Gives New Status to Mexicans in U.S., N.Y. Times, Aug. 25, 2003, at A1 ("In June, the mayors of the Indians cities of Fort Wayne, East Chicago, Columbus and Indianapolis announced they would accept the Matricula card. In July the State of Indiana and the cities of Madison, Ind., and Cleveland and Columbus in Ohio recognized it. This month, Cincinnati followed suit. Officials say the move would be a boon to local economies, encouraging Mexican immigrants to pour money into banks and businesses. They also say immigrants with bank accounts will be less vulnerable to criminals who prey on people who carry cash or keep money at home.").

[42] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107–56, § 326, 115 Stat. 272, 317 (2001).

[43] See 31 C.F.R. § 103.121 (2004).

[44] H.R. 5025, 108th Cong., 2d Sess. (2004). An amendment offered by Rep. Michael Oxley striking section 216, which prevented issuance of regulations regarding Matricula Consular cards, passed the House by a bipartisan vote of 222–177.

requirements for a state-issued identification card (including a drivers' license).

While proponents of this measure have linked driver's licenses to security concerns by pointing out that many of the 9/11 hijackers were able to obtain licenses, we would note that making it more difficult to obtain a driver's licenses will not deter terrorism. Even requiring passports to obtain driver's licenses would not have prevented the 9/11 hijackers from getting driver's licenses; they all had passports.

Beyond the ineffectiveness of the proposal, it also would serve to exclude millions of people from American society and hinder state efforts to regulate drivers. Recent estimates indicate that we have between eight and fourteen million undocumented aliens in the United States, many of whom may not have passports and would be prevented from obtaining licenses under the legislation. The reality is that in many parts of the country it is virtually impossible to survive in our society without a car, and it is unlikely that undocumented aliens will simply give up and leave the country when they learn they cannot obtain licenses.

Moreover, a license is not just a privilege for the driver's benefit but also serves state purposes. By licensing drivers, the state can ensure that the drivers who receive licenses have acceptable driving skills, know traffic laws, and have liability insurance. In addition, registering and photographing all drivers helps the state to monitor driving records.

Finally, denying access to licenses could pose a safety risk. Traffic accidents are the leading cause of death, with forty-four thousand traffic fatalities in 2002.[45] According to a study conducted for the AAA Foundation for Traffic Safety, unlicensed drivers are five times more likely to be in fatal crashes than drivers with valid licenses.[46]

E. THE LEGISLATION CONTAINS OTHER OBJECTIONABLE PROVISIONS THAT WOULD NOT ENHANCE SECURITY AND WERE NOT RECOMMENDED BY THE 9/11 COMMISSION

1. The legislation increases criminal penalties for false claims to citizenship without any nexus to national security goals

We object to section 3086, which imposes five years imprisonment for making false claims to citizenship for the purpose of entering or remaining in the United States. This is yet another example of the mean-spirited, anti-immigrant sentiment that pervades this bill. Many immigrants, both legal and undocumented, may make such a claim upon an encounter with a law enforcement or immigration official. We believe that a five year jail term for such a statement is unnecessary and very counterproductive. Federal law already exacts severe consequences on immigrants who make false claims to citizenship. There is no valid policy reason for making taxpayers bear the high cost of jailing an immigrant for five years for such a minor non-violent offense.

Making a false claim to citizenship is already punishable under the Immigration and Nationality Act (INA). Section 212 makes an

[45] National Safety Council, Injury Facts: Report on Injuries in America (2003).
[46] AAA Foundation for Traffic Safety, Unlicensed to Kill: The Sequel (Jan. 2003).

alien who falsely represents themself as a citizen inadmissible, and there is no waiver of the consequences of this offense.[47] In addition, this offense constitutes a crime of moral turpitude and triggers removability from the country under section 237 of the INA.[48] The INA makes a person who has committed a crime of moral turpitude subject to mandatory detention in jail, if they are convicted of a sentence of more than 1 year in prison.[49] This immigration detention, which can last for years, normally follows the service of a criminal sentence in prison.

Section 3086 needlessly piles on additional jail time to an immigrant who already faces removal, with mandatory detention in many cases. Upon deportation, the immigrant would be barred from the United States for life.[50] The consequences of one false statement, both to the immigrant and to their family, community and employer, are already severe. Adding a five year jail term to someone who is already subject to deportation, without possibility of return under our federal laws, is grossly excessive to the crime.

Furthermore, the 9/11 Commission did not recommend the enhancement of this penalty, nor did it recommend anything remotely related to this policy. The Majority on this Committee justifies the inclusion of this policy[51] in this bill by the Commission's recommendation that "The Department of Homeland Security, properly supported by Congress, should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding qualified travelers."[52]

Jailing people for five years for claiming that they are U.S. citizens has nothing to do with a biometric entry-exit system, nor with speeding the transit of qualified travelers. There is no indication that a policy like this would catch terrorists trying to enter the country, or prevent a terrorist attack. In fact, none of the September 11th terrorists claimed U.S. citizenship to enter this country.

This policy is simply an anti-immigrant provision designed to punish, jail and deport immigrants, especially those who are undocumented. It has no nexus to national security and is most likely to result in years of imprisonment followed by the eventual deportation of random immigrant workers. We object to this penalty, and certainly oppose its inclusion in this bill, which is supposed to be responding to the recommendations of the 9/11 Commission.

2. The legislation would hinder business and tourism travel throughout the western hemisphere

Another provision of the bill would hamper travel throughout the western hemisphere and cause chaos for businesses and national economies. Section 215(b) of the Immigration and Nationality Act states that, unless otherwise provided, it is unlawful for U.S. citi-

[47] 8 U.S.C. § 1182(a)(6)(C)(ii).
[48] 8 U.S.C. § 1227(a)(2)(A)(i).
[49] 8 U.S.C. § 1226(c)(1)(B).
[50] See Section 212 of the INA. An inadmissible person is not eligible to get a visa to return to the United States.
[51] Memorandum from the Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Comm. on the Judiciary to Members, U.S. House Comm. on the Judiciary 16 (Sept. 27, 2004) (regarding the Markup of H.R. 10, the "9/11 Recommendation Implementation Act" and other bills).
[52] 9/11 Commission Report at 389.

zens to depart from or enter the United States unless they bear a valid U.S. passport. By regulation, the Secretary of State has provided that U.S. citizens are excepted from this requirement when traveling directly between parts of the United States, and when traveling between the United States and any territory in North, South or Central America (i.e., the western hemisphere).[53]

Section 3001 of H.R. 10 would amend section 215(b) to invalidate the western hemisphere exception, thus requiring a passport to travel to and from currently exempted countries. It would permit the President to waive the passport requirement for travel to Canada and Mexico, but it would require such travelers to carry documents that the Secretary of Health and Human Services has designated as establishing U.S. citizenship for the travel purposes.[54]

As it is has been proposed, the measure would overburden passport processing operations and slow business and tourism travel to a halt. First, though it essentially would require the issuance of new passports for travelers to currently exempted countries, the legislation provides no funding to increase passport application processing. As such, the need for so many passports could result in severe backlogs and prevent people from taking needed trips. Further, it would have a particularly negative impact on the tourism industry of the Caribbean, which relies on U.S. travel of those without passports. For this reason, the provision would raise the ire of the travel industry and many businesses who would miss opportunities because they could not engage in last minute travel.[55]

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[53] 22 C.F.R. § 53.2(a)–(b). Cuba is excluded from the western hemisphere exception. Id.

[54] The Secretary would have 60 days to pass an interim rule and publish a list of qualifying documents in the Federal Register. As of 90 days after that publication, the President would not be authorized to permit citizen arrivals or departures without the designated document or documents.

[55] Another concern we expressed during the markup is that it does not limit the use of secret immigration proceedings. During the Committee markup, Reps. Howard Berman (D–CA) and Delahunt (D–MA) offered an amendment to set out guidelines for government closure of hearings in immigration court in response to the blanket closure of these hearings by the Chief Immigration Judge in the weeks following the September 11th attacks. We feel that this amendment falls squarely within the recommendations of the 9/11 Commission. Specifically, the Commission recommended that: "The burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive's use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use." The amendment offered by Rep. Berman would have created guidelines for the use of the government's power to close hearings.

On September 21, 2001, Chief Immigration Judge Michael J. Creppy issued a memorandum ("Creppy Directive") implementing an order from the Attorney General to close certain immigration hearings. These cases were to be conducted completely in secret with "no visitors, no family and no press." The mandate for secrecy even prohibited "confirming or denying whether such a case is on the docket or scheduled for hearing."

It has been reported that the INS did not use classified information in any of these hearings. Instead the government has asserted that all purported terrorism-related proceedings need to remain closed in order to protect the privacy of the detainees and prevent information about government intelligence-gathering methods from reaching al Qaeda.

The U.S. District Court for the Eastern District of Michigan found that the order closing immigration hearings was unconstitutionally broad (*Detroit Free Press* v. *Ashcroft*, 195 F. Supp. 2d 937 (E.D. Mich. 2002), and the Federal Court of Appeals for the Sixth Circuit affirmed. *Detroit Free Press* v. *Ashcroft,* 303 F.3d 681 (6th Cir. 2002). In a separate case the U.S. District Court for New Jersey found the closures unconstitutional (*New Jersey Media Group* v. *Ashcroft,* 205 F. Supp. 2d. 288 (D.N.J. 2002), but the Third Circuit reversed (*New Jersey Media Group* v. *Ashcroft*, 308 F.3d 198 (3rd Cir. 2002). The Supreme Court declined to hear the cases, effectively allowing the government to continue the process, at least within the geographic confines of the Third Circuit.

Open proceedings, in judicial and quasi-judicial settings, protect individuals from arbitrary action and the public from sloppy decision-making. Transparent proceedings are also important in maintaining public confidence in the fairness of government activities. There are clearly individual cases where proceedings should be closed to protect the safety of participants or national

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II. The Legislation Would Authorize the Federal Government and Private Employers to Intrude into the Everyday Lives of Americans

A. THE LEGISLATION VIOLATES PRIVACY RIGHTS AND FEDERALISM BY STANDARDIZING DRIVER'S LICENSES TO CREATE A NATIONAL IDENTIFICATION CARD.

We object to Title III, Subtitle B, Chapter 1, which provides new standards for drivers' licenses and identification cards.[56] This provision goes far beyond the Commission's recommendations. It comes dangerously close to creating a national identification card system. It threatens American citizen's rights to privacy. It violates the tenets of federalism and forces unfunded mandates on the states. It excludes important stakeholders from the policy-making process and ignores state policy needs. It marginalizes immigrants in America, and ignores more reasonable alternatives for securing personal identification documents.

In its final report, the 9/11 Commission issued the following recommendation:

> Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers [sic] licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity

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security. But the Creppy Directive allows the partial closing of proceedings based on the government's prerogative, without any showing of legitimate security needs.

As of May 29, 2002, 611 individuals have been subject to one or more secret hearings. As noted, there is a split in the circuit that have considered the legality of these proceedings, and, in opposing review by the Supreme Court, the Justice Department announced it was reconsidering its policy. Brief for the Respondents in Opposition at 13, North Jersey Media Group (No. 02–1289). But, in the absence of legislative action, there is nothing to prevent the Justice Department from conducting more secret immigration hearings in the future.

The amendment offered by Mr. Berman responds to the Administration's decision to require blanket closure of immigration proceedings without any showing of legitimate security needs by the government. The amendment would have established a statutory presumption of openness for removal hearings while preserving the possibility that a hearing may be closed upon a specific showing of need. Namely, the amendment would create an exception that on a case-by-case basis, hearings may be closed to preserve confidentiality of the immigrant (as in asylum adjudications or cases involving minors), to protect national security if classified information is involved, or to protect the identity of a confidential informant.

During the markup, the Chairman of the Subcommittee on Immigration opposed the Democratic amendment claiming that "it is common today for immigration cases to be closed. In fact, all asylum proceedings and proceedings regarding inadmissibility of a particular applicant are closed today." This statement is false. In making this argument, the Subcommittee Chairman's staff pointed to two sections of the Code of Federal Regulations stating that "All hearings, other than exclusion hearings, shall be open to the public * * *" (8 C.F.R. § 1003.27) and "Exclusion hearings shall be closed to the public." 8 C.F.R. § 1240.32. These provisions apply only to exclusion hearings—proceedings that commenced prior to April 1, 1997. The do not apply to all inadmissibility hearings, as the Subcommittee Chairman claimed. To the contrary, all asylum and removal proceedings are presumptively open to the public. There are limited exceptions. For example, hearings can be closed by the court when the proceeding involves an abused alien spouse or child or if information presented in the hearing is subject to a protective order.

It is unfortunate that the Majority members of the Committee were misinformed by their Subcommittee Chairman. We would hope that without this misinformation, our colleagues would have joined us in reinstating a transparent and open system for our immigration hearings that provides safeguards to protect privacy, classified information, national security, and confidential informants.

[56] Specifically, this language is found in Sections 3051 through 3056. Although we oppose Chapter 1 of this Subtitle, we do not object to Section 3054, which makes it illegal to traffic actual document authentication features, in addition to false authentication features.

to ensure that people are who they say they are and to check whether they are terrorists.[57]

After discussing the importance of continuing to welcome immigrants and keeping track of who enters the country, the Report also noted, "All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud."[58] The hijackers used licenses and IDs to rent cars, conduct other activities to enact their plan, and eventually board aircraft for the 9/11 attacks. Clearly, the Commission recommended the establishment of identification standards to ensure that terrorists could not traverse the country and conduct business transactions in furtherance of future domestic attack plans.[59]

The 9/11 Commission's recommendation is broad and gives Congress room to work with federal agencies and states to develop standards that can be applied nationwide. Yet this Chapter goes far beyond the Commission's recommendation that the federal government set standards for identification. It requires the states to overhaul their procedures for issuing driver's licenses and identification cards to meet Federally-proscribed standards. It requires that states establish a database system for sharing all of the personal information and driving histories on license and ID card holders, though the Commission did not recommend any type of unified database for this data. The Commission did not suggest that the Federal government should interfere with states' prerogatives or the privacy rights of individuals.[60] Nor was there a suggestion that Federal grants to the states should hinge on a shared database agreement as proposed in H.R. 10. This Chapter also forces states to bear all of the financial costs of these new standards by failing to fund these mandates. The proposal in H.R. 10 goes well beyond the Commission's recommendation and unnecessarily violates the privacy rights of citizens and residents.

Section 3052 establishes minimum standards for Federal recognition of state-issued driver's licenses or identification cards. It requires, at a minimum, that the following information be included on the identity documents: full legal name; date of birth; gender; license or ID card number; photo; residential address; signature; security features to prevent fraudulent use or tampering; and a common machine-readable technology with defined minimum data elements.

Section 3052 also spells out what forms of information and proof a state must require before issuing a license or ID: a photo identity

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[57] 9/11 Commission Report at 390 (emphasis added).

[58] Id.

[59] See comments of 9/11 Commission Vice Chair Lee Hamilton at Oversight Hearing on Privacy and Civil Liberties in the Hands of the Government Post-September 11: Recommendations of the 9/11 Commission and the U.S. Department of Defense Technology and Privacy Advisory Committee Before the Subcomm. on Commercial and Administrative Law of the House Committee on the Judiciary, 108th Cong., 2d Sess. 97 ("Just to let you know our concern here, all of these hijackers, except one, had U.S. identification. And what we are saying is that secure identification is very, very important in terms of counterterrorism. And we—we did not endorse a national ID * * * Keep in mind that these hijackers were extremely skillful in being able to find the gaps in our system. And we are trying to protect against that as best we can.")

[60] See Statement of Vice Chair Lee Hamilton and Commissioner Slade Gorton, National Commission on Terrorist Attacks upon the United States, Before the Subcommittee on Commercial and Administrative Law and the Subcommittee on the Constitution of the House Committee on the Judiciary, p. 3. (August 20, 2004) [Hereinafter Hamilton and Gorton Statement]. ("Individual rights and liberties must be adequately protected in the administration of the significant powers that Congress has granted to executive branch agencies to protect national security.")

document or alternative with legal name and date of birth; a document with date of birth; proof of social security account number; and a document with name and address of principal residence. The states must verify each document with the original issuing agency, and they are prohibited from accepting any foreign documents, except an official passport, for these purposes.

Furthermore, section 3052 requires states to use digital technology, retain copies or images of documents; require facial image capture for driver's license issuance; establish a procedure to verify information for renewals; confirm the accuracy of social security numbers and take action if one is registered to another person; refuse to issue licenses without confirmation that the applicant has terminated their license from another state; secure licensing facilities and employees authorized to manufacture or produce them; and establish fraudulent document recognition training.

The National Governors Association "strongly opposes" these provisions in H.R. 10.[61] They note that the bill was "drafted without any input from Governors" and "exclude[s] states from the standard-setting process despite states' historic roles as issuers of driver's licenses and other identification data."[62] In their opinion, the bill "would impose unworkable technological standards and verification procedures on states, many of which are well beyond the current capacity of even the federal government." They oppose the requirement that they share their state information with the federal government. In their view, this proposal would "create financial, administrative and implementation problems by requiring state compliance with these unprecedented, federally-imposed standards within a short timeframe." In addition, "the cost of implementing such standards for the 220 million driver's licenses issued by states represents a massive unfunded federal mandate."[63] We agree with their assessment and share their concerns.

As written, this Chapter would require state departments of motor vehicles to verify each and every identification document used to prove identity, by confirming the document with the government agency or company that issued it. Without a well-developed cooperative approach, this will become a bureaucratic nightmare that will be costly to the states and will cause substantial delays for citizens and residents. H.R. 10 also fails to provide any protections for the digital data it requires states to store digitally. There are no limits on how it may be used, nor is there any guidance for maintaining data security. This bill even goes as far to make the appearance of the IDs uniform—a step that is eerily close to a national ID card.

The states have a right to participate in determining how features for licenses and ID cards should be changed. Despite their expertise, they had no role in developing the requirements in H.R. 10. In effect, this Chapter empowers the Federal government to usurp state control over licensing and identification and establishes the equivalent of a national identity card with different state names on them.

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[61] NGA Letter.
[62] Id.
[63] Id.

Drivers' licenses are not simply identification documents. Their purpose is to ensure that people are safe drivers, who know the traffic laws and have defensive driving skills, before they drive on our roads and highways. Licensing also makes it possible for drivers to have liability insurance to protect other drivers on the road. The states should maintain their critical role in the issuance of licenses. Their obligation to ensure safety on their roads to protect their residents and visitors should not be ignored.

Perhaps the objections raised by the National Conference of State Legislatures ("NCSL") best enunciate the concerns we share with the states about the imposition of these standards and the obligation to share the data of state residents:

> These provisions show no respect for federalism. They constitute egregious unfunded mandates dealing with drivers' licenses, birth certificates, personal identification cards and use of social security numbers that are likely to impose billions in costs on states. They preempt and undercut state legislative authority through a federally-contrived rulemaking process. They set a prescriptive framework for a national identification card. They ignore efforts made in every state to strengthen the integrity of drivers' licenses issuance and verification. They surrender legislative prerogative to federal agencies and bureaucrats without the benefit of congressional oversight. They constitute the groundwork for potentially compromising civil liberties and individual privacy. They compel state participation in compacts that are not recognized by state lawmakers and elected officials. They reference a federal grant process and funding of 'sums as may be necessary,' all in an environment of bulging federal deficits and constraints on domestic discretionary spending.[64]

Title III of H.R. 10 proposes a computerized national database of every American driver's license and state identification card under the guise of strengthening our homeland security. Section 3053 requires that states must agree to participate in an interstate compact for the electronic sharing of driver license data, known as the "Driver License Agreement," in order to receive any grants or assistance under the bill. It requires state motor vehicle databases contain (1) all data fields printed on driver's licenses and identification cards issued by the state, and (2) motor vehicle drivers' histories, including motor vehicle violations, suspension, and points on licenses. A mega-datebase such as this one represents a perilous threat to our Constitutional rights. By forcing state governments to maintain and share files on almost every adult in the state, H.R. 10 will truly usher in the era of a "Big Brother" government.

Past efforts to establish a national ID card to identify and track U.S. residents have failed, due to the threats they pose to our liberty.[65] H.R. 10 seeks to achieve that same purpose through the

[64] NCSL Letter. In addition to the provision on driver's licenses and state identification cards, the letter referred to provisions on birth certificates and social security data in Title III, Subtitle B, Chapters 1, 2, and Section 3071 of Chapter 3 from H.R. 10.

[65] See Alison M. Smith, Congressional Research Service, National Identification Cards: Legal Issues, n. 1–3 (Jan. 3, 2003). Examples include the Immigration Reform and Control Act of 1976,

Continued

back door. Instead of creating a new national ID card, whose data would be held and monitored by the Federal government, this proposal standardizes state ID cards so that they achieve the same purpose. In this proposal, the states maintain the data, but they are forced to create a mega-database whose data must be shared by all 50 states and the U.S. territories.

There are no privacy limitations on the use of this data.[66] The bill does not prevent the sharing of this information with other people, companies, Federal government agencies or foreign governments that may make inquiries. There are no systems for maintaining the datashare systems, ensuring the accuracy of the data, preventing fraud and tampering, making corrections, or filing complaints for inaccuracy or misuse of the data. Currently, some states do not even have accurate or complete databases. Not all states can verify whether or not a certain person has a valid driver's license from their state. Certainly the Federal government should not mandate linking up state databases when some states cannot provide reliable information about their license and ID holders.

The lack of data safeguards ensures that the data will often be inaccurate and misused. There will be serious consequences for untold numbers of people who may miss flights, land in jail, fail to get benefits or be denied other opportunities due to database errors.

As noted above, the system proposed in this Chapter will dangerously increase the Federal government's ability to monitor individuals. The data-sharing system is bound to be subject to unauthorized disclosures and leaks. During World War II, for example, supposedly sacrosanct census data was used to identify Japanese-Americans for internment.[67] This mega-database will be a tempting target for future legislation and policies. The FBI could use this database to identify certain immigrants or members of an ethnic group for "voluntary interviews".[68] Collection agencies and states could erroneously identify people as unpaid debtors or child support evaders. People might be identified through the database because they criticized the President for U.S. involvement in a war or protested an international organization for the ills of globalization. The system is ripe for abuse and misuse that will violate people's rights to privacy, speech, and civil rights.[69]

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which stated, "Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card." Pub. L. 94–571. Similarly, Rich Thornburg, Attorney General for President George Bush, ruled out identification cards for the use of guns in 1989, feeling that it was "an infringement on rights of Americans." See Alison M. Smith, Congressional Research Service, National Identification Cards: Legal Issues n.2 (Jan. 3, 2003) (citing Ann Debroy, "Thornburg Rules out Two Gun-Control Options," Wash. Post, June 29, 1989 at A 41). Finally, Representative Dick Armey has been quoted as saying "[w]e didn't beat back the administration's plan to issue us all 'health security cards' only to have Congress adopt an I.D. card to track down immigrants." Id. (citing William H. Minor, Identity Cards and Databases in Health Care: The Need for Federal Privacy Protections, 28 Columb. J.L. & Soc. Probs. 253,273 (1995)).

[66] *See* Hamilton and Gorton Statement, p.1 ("We also recognize that with the enhanced flow of information comes a need to establish guidelines and oversight to make sure that the privacy of our citizens and residents is respected and preserved.")

[67] H.R. Rep. No. 104–469, 104th Cong., 2d Sess. pt. 1, at 520 (1996)

[68] For example, in late 2001 and 2002, the FBI conducted a program of "voluntary interviews" of over 5000 Muslim residents of the U.S., seeking information related to the September 11, 2001 attacks and terrorist threats to the United States. Similar interviews of Iraqi residents in the U.S. were conducted prior to the initiation of the war in Iraq in 2003.

[69] See Hamilton and Gorton Statement at 2 ("We did propose a general test to be applied to consideration of the renewal of other provisions of the USA PATRIOT Act, and we believe that principle should also be applied to other legislative and regulatory proposals that are designed

Combined with other sections of H.R. 10 that prevent or limit the use of other forms of identification,[70] track the movement of Americans in and out of the country,[71] standardize state records for birth certificates, and set up computerized systems for state and federal sharing of birth and death records,[72] the impact of this proposal for driver's licenses and state-issued ID cards is truly frightening.[73] America would become a place where a person's every move, every encounter with state or federal governments from birth to death, would be tracked and monitored by those governments. H.R. 10 is a major leap forward in creating an all-intrusive "Big Brother" government.

Section 3055 empowers the Secretary of Homeland Security to make grants to the states to assist their efforts to conform to the minimum standards in this chapter. It authorizes such sums as may be necessary to carry out the Chapter from fiscal years 2005 through 2009. However, there is no guarantee that these grants will be made to all states and territories, or that sufficient funds will be provided to cover the massive expenses of these reforms. Furthermore, the demand for state compliance is not contingent upon the provision of federal funding to meet the costs of these reforms. The result will likely be a large unfunded mandate upon the states.[74] Yet many states continue to struggle financially as a result of other federal budget cuts in recent years. How will they pay for this plan? If these measures are needed for our national security, they should be paid for with federal funds. The burden of imposing and sharing these mandatory standards should not rest with the states.

Section 3056 gives the Secretary of Homeland Security the authority to make regulations, certify standards and issue grants under this title, in consultation with the Secretary of Transportation and the States. This gives ultimate authority to DHS, all but removing the Department of Transportation from the process, despite their authority over federal highways, their impact over State road and highway policy, and their experience working with states on road safety and licensing policies. At a minimum, the Secretary of Transportation should share the authority to implement this Chapter by making regulations, certifying standards and issuing grants in conjunction with the Secretary of Homeland Security. As discussed below, Rep. Linda Sanchez (D–CA) offered a substitute that would have achieved this balance. Under her proposal, the Secretaries of Transportation and Homeland Security would have joint authority to ensure that road safety policy was considered along with homeland security needs in creating and implementing these new standards.

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to strengthen our security but that may impinge on individual rights. The test is a simple but important one: The burden of proof should be on the proponents of the measure to establish that the power or authority being sought would in fact materially enhance national security, and that there will be adequate supervision of the exercise of that power or authority top [sic] ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use.")

[70] See H.R. 10 § 3005.

[71] See id. § 3001.

[72] See id. § 3061.

[73] See NCSL Letter.

[74] See NGA Letter.

We would also note that this policy would leave citizens vulnerable to immigrant drivers on the roads without licenses. Many undocumented aliens who do not have passports are going to drive whether they have driver's licenses or not. Preventing the states from issuing driver's licenses to these aliens will result in a lot of untested, uninsured drivers on the roads. As a number of immigration organizations noted, "Not only would these requirements grind to a halt the issuance of driver's licenses throughout the country, they also would lead to a de facto immigration status requirement. Such a result would severely undermine the law enforcement utility of the Department of Motor Vehicle databases by discouraging individuals from applying for licenses." [75]

Rep. Sanchez did offer a Democratic substitute to this Chapter at the Full Committee mark-up that Republicans defeated in a 19 to 12 vote.[76] Her proposal would have satisfied the recommendation of the 9–11 Commission, while bringing all those who have a serious interest in the implementation of standards together. She proposed creating a working group of federal and state experts who would carefully determine standards that would both ensure the security of driver's licenses and state identification cards and meet the policy needs of the States. This working group would include officials from the Department of Transportation, the Department of Homeland Security, and State motor vehicle departments. The working group would have reported their findings to Congress, allowing us to make a more reasoned decision that met the objectives of all stakeholders.

Although the substitute amendment failed, Rep. Melvin L. Watt (D–NC) expressed bi-partisan concerns about how to improve driver's license security and the risks of imposing a national identification card:

> Mr. Watt: "I just wanted to point out that we had a hearing in the Commercial and Administrative Law Subcommittee on this whole national identification process. And uniformly—and I wish my Chairman Mr. Cannon, was here to express this—but uniformly the people on the—members on that subcommittee were extremely concerned about how this new identification system got implemented. And I think the underlying bill is well beyond what any of those people would have thought would have been a desirable place to be, and I think Ms. Sanchez's amendment gets us much, much closer to the appropriate balance." [77]
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> Mr. Watt: Quoting Mr. Cannon from the subcommittee transcript: "'And I suspect that this subcommittee, perhaps the Constitution subcommittee in addition, is going to have a lot to say about how we at least approach that problem.' He's talking about the national ID card problem. 'And I think that means a commission where people who are very thoughtful, who have significant background, and who are'—'people who are willing to say we don't necessarily need to federalize this process. And if we do federalize this process, it shouldn't just be by the damn feds sucking information out of local folks, It

[75] Immigration Sign-On Letter.
[76] H.R. 10 Markup at 317–332.
[77] H.R. 10 Markup at 322.

ought to be the local folks who get something back, and to do that, you ought to have some kind of protection, maybe an anonymizer. * * * It is vital to America and it is, I think, the cornerstone of what our grandchildren are going to enjoy or suffer in the future."[78]

We agree with the 9/11 Commission that drivers' licenses and identification cards should be secure and should not be easily obtainable by terrorists, as was the case before September 11, 2001. However, creating a national ID is not the answer. All of the States and relevant federal agencies should have a role in carefully constructing appropriate national standards. A rigid, federal mandate is unwise and places unreasonable expectations on the states. This is especially true when the federal mandate is not funded, as in this case.

Most importantly, this proposal does not strike an appropriate balance between our rights to individual privacy and the federal government's responsibilities to enhance our national security. We can improve the screening of card applicants, enhance the security of the identification cards, and ensure that driver's meet safety tests. This can be done without violating individual privacy, creating a database with information on almost every U.S. resident, and increasing the number of dangerous, uninsured drivers on American roads and highways. It is our obligation to find the right balance. Rushing into a bad policy that establishes a "Big Brother" government database that will soon move beyond our control is not the answer. There is no evidence that the 9/11 Commission ever suggested or contemplated such a sweeping, overbroad policy to achieve the objective of securing domestic identification. Individual privacy must and can be protected while we improve our national security. Alternative reforms could successfully achieve this balance.

B. THE LEGISLATION WOULD PROVIDE UNFETTERED ACCESS TO INACCURATE AND INCOMPLETE CRIMINAL BACKGROUND INFORMATION ON EMPLOYEES

The bill also would subject private citizens to widespread dissemination of any criminal history information, regardless of accuracy. As reported from the Committee, section 2142 authorizes private employers to obtain background information, however inaccurate, on potential employees from the Attorney General. This program would undo the careful balance that exists between security needs and privacy interests and could lead to the dissemination of incorrect and private information.

Under current law, the Attorney General is authorized to acquire, collect and classify information for the purpose of criminal identification and records, the identification of deceased individuals and the location of missing persons.[79] This information may only be exchanged with federal government, the states, cities, and penal and other similar institutions.[80]

Section 2142 would expand this authority significantly. It would create a pilot program that would empower private employers to

[78] Id. at 326.
[79] 28 U.S.C.§534.
[80] Id. §534(a)(4).

access federal databases when such a search would be legal under state law. It requires the Attorney General to set up a system by which this information can be reliably accessed by fingerprint or other biometric identifiers. The search requester will be provided with an identifying description of the individual, and all available history on arrests, detentions, indictments or other formal charges. The requester also would receive any available dispositional information on the aforementioned, such as acquittal, sentencing, correctional supervision and release information. The Attorney General would then be required to submit a report regarding how a background program might be applied to the general public. Section 2142 also creates a program by which security guard companies may check potential employees' backgrounds.

While we understand the need for ensuring the integrity of, this measure would not be of benefit in that regard. We believe that a study must proceed a actual program, not follow it. In the four months of its operation, the pilot program envisioned by the bill's proponents could collect information on countless innocent Americans. We cannot support such a program for many reasons.

First, the program exceeds the scope of the 9/11 Commission report. It is unclear how this provision even relates to terrorism at all that it is not limited to those who work in national security-related positions or even those who work for the government. Plainly, there is no justification for allowing waitresses, accountants, cooks, and construction workers to be subjected to a federal background check through this bill. That is precisely whey states that allow discrimination based on criminal history require some nexus between the position and the relevance of one's criminal past. For example, many states regulate the employment only of those who work in law enforcement, or with the children or the elderly.[81] To create a blanket check for people regardless of the sensitivity of their jobs muddies what this bill intends to do—prevent future terrorist attacks—and jeopardizes our privacy.

Second, there are not safeguards to protect the information that employers collect and submit. The legislation contains no guidelines for what to do with information one it has been given to the Justice Department. It does not regulate what officials, public or private, would have access to it. Further, it does not provide whether the information is destroyed after the criminal history check or whether it remains in some new database of average Americans who have done nothing more than apply for a job. During the markup, the majority was forced to acknowledge that the legislation does not address these issues.[82]

Beyond our concerns about what the Justice Department would do with its new boon of personally-identifiable data, there are concerns about the lack of regulations for employers. Section 2142 is silent about what employers are required to do to protect their em-

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[81] Amy Hirsch, Center for Law and Social Policy, Every Door Closed: Barriers Facing Parents With Criminal Records 15 (2002).

[82] H.R. 10 Markup.

Rep. Jackson Lee (D–TX): "I ask do you know, under the pilot program, what would happen to those fingerprints of all these individuals who would be subject to the criminal history background check?

Rep. Steve Chabot (R–OH): "It's not been set up yet, so the details of this ultimately will be determined."

ployees' and applicants' sensitive information. There also are no provisions for ensuring that the background checks are actually being requested by bona fide employers instead of merely persons seeking private information on relatives or business competitors.

Third, the provision has no safeguards for accuracy. The Brandon Mayfield fiasco[83] demonstrates how easy it is to misidentify someone, even through our criminal and fingerprint databases. Despite this fact, the legislation does not require the database to have any level of accuracy before allowing information to be shared so that Mr. Mayfield's ordeal is not repeated. Beyond misidentification, it is possible that the files may be incomplete because they may not hold all of the dispositional information of how an arrest or charge was resolved. For this reason, the Justice Department should not disseminate arrest records until it can demonstrate that it also will disseminate acquittals, mistrials and those situations where charges were dropped.

This provision invites unwarranted discrimination against those with criminal pasts. The Equal Employment Opportunity Commission has found that discrimination on the basis of criminal history can very well be a violation of Title VII under a disparate impact theory, and should only be allowed when proven that it is a business necessity.[84] It has further stated that arrest records can be particularly troublesome, and that an arrest absent a conviction should very rarely ever be a justification for not hiring an applicant.[85] Finally, even the President has admitted the importance of integrating past offenders into our society, such as to reduce recidivism.[86] The legislation's new criminal history checks will just invite more discrimination against those who have reformed their lives, those whose convictions are far in the past, even those who were arrested, but never convicted, of a crime, and make it harder for them to reintegrate into society.

Finally, we would note there are no meaningful limitations whatsoever on the scope or duration of the pilot program. Ordinarily, when a pilot program of this magnitude is created, Congress will limit the program's geographic or other scope or duration. No such limitations are set forth in this legislation, effectively giving the Attorney General carte blanche authority to develop a program that could intrude on our civil liberties and privacy.

While we support background checks for security guards we cannot support background checks for the myriad of other positions that have no security or terror relation whatsoever. To include such a measure in an anti-terrorism bill is misleading and jeopardizes

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[83] The FBI held Brandon Mayfield for two weeks in connection with the Madrid train bombing. The FBI held Mr. Mayfield on the basis of a fingerprint on a bag with detonators near the bombing, despite the fact that the Spanish government had questioned the FBI's identification of Mr. Mayfield. The FBI eventually released and apologized to Mr. Mayfield for its mistake.

[84] Equal Employment Opportunity Commission, Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964 (Feb. 4, 1987).

[85] Policy Guidance on the Consideration of Arrest Records in Employment decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Sept. 7, 1990).

[86] The President, State of the Union Address (Jan. 20, 2004) ("Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit crime and return to prison. So tonight, I propose a four-year, $300 million prisoner re-entry initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups. America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.").

what the 9/11 Commission recommended as real fixes for the terrorist threat. Unfortunately, the majority rejected an effort to limit the scope of the checks to security employees and to study the possibility of further expansion.[87]

C. THE LEGISLATION WOULD AUTHORIZE THE GENERATION OF TRAVEL DATABASES AND SCREENING PROGRAMS WITHOUT REGARD TO ACCURACY

Another concern with the legislation is that it would permit the development of travel databases and screening programs but would not ensure the integrity of those records. Section 2173 directs the Assistant Secretary of Homeland Security to begin testing a next generation passenger prescreening program, and directs the Secretary to establish procedures by which a person can appeal their position on a no-fly list.

While few can dispute the need for passenger screening, such measures must be done properly. At least hundreds, if not thousands, of airline passengers have complained to the Transportation Security Administration that their names incorrectly appear on TSA no-fly lists; in July 2004 alone, two-hundred and fifty people sought to have their names removed from such lists.[88] We believe the ability to remove oneself from a no-fly list is such a basic right for every American that it should receive the government's highest attention.

Unfortunately, the Department of Homeland Security has been operating the no-fly list for over two years since the attacks and has not seen fit to implement a process by which a passenger may remove his or her name.[89] Two persons who have appeared on the list, Rep. John Lewis (D–GA) and Sen. Edward M. Kennedy (D–MA) attempted in vain to correct the problem; Rep. Lewis was able to avoid being flagged by adding his middle initial to travel bookings while Sen. Kennedy spent three weeks getting TSA officials to remove his name.[90] This lack of commitment to civil liberties by the government begs the intervention of an independent body that is focused on more than just security.

It also is important that there be judicial review of the no-fly process, such that the public would have a means of challenging any unfavorable rulings by the government. H.R. 10 however, does not permit review and leaves any challenges to be decided by the very organization that categorized the individual as a security risk in the first place. It has taken far too long for such a process to be implemented.

To that end, Rep. Jackson Lee offered an amendment at the Committee markup that would have put the onus on the legislation's newly-created Civil Liberties Protection Officer to create this program.[91] The amendment also would have ensured that no-fly

[87] By a vote of 11–20, an amendment by Rep. Sheila Jackson Lee (D–TX) to remove the pilot program was defeated. See H.R. 10 Markup.

[88] Sara Kehaulani Goo, Hundreds Report Watch-List Trials, Wash. Post, Aug. 21, 2004, at A8.

[89] The Transportation Security Administration, an agency within the Homeland Security Department, recently announced the testing phase of its new Secure Flight program. 69 Fed. Reg. 57,345 (Sept. 24, 2004). The notice makes only a vague reference that "TSA will establish comprehensive passenger redress procedures and personal data and civil liberties protections for the Secure Flight program." Id.

[90] Id.

[91] See H.R. 10 Markup.

list criteria would be based on reliable evidence that an individual is a known or suspected terrorist instead of on constitutionally-protected activity. Finally, the amendment would have provided a civil remedy to enforce the removal process in court. Unfortunately, the Majority rejected these widespread concerns and defeated the amendment.[92]

Another provision in the bill, section 3081, contains shortcomings similar to those in section 2173. It directs the Secretary of State to study the feasibility of creating a database recording the lifetime travel history of U.S. citizens and foreign nationals. This provision goes far beyond the recommendations of the 9/11 Commission and unnecessarily intrudes on the privacy of Americans.

In its final report, the 9/11 Commission wrote, "Targeting travel is at least as powerful as a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.[93] Note that the Commission recommended targeting terrorist travel—not creating a master database of the travel history of innocent Americans. Contrary to this recommendation, the program in H.R. 10 would generate a history of even non-terrorist travel.

We have two primary concerns, and the first is for the privacy of all who use our commercial air space. The Majority has not explained how having a record of every flight that every American has ever taken will reduce the terrorist threat.

Our second concern is that the program would collect information on everyone, regardless of whether they are a threat, or even suspicious, and the vast amount of data reflecting innocent behavior will obscure the truly threatening activity. As many advocacy groups have noted, refining the tracking process—not expanding it—will make preventing terrorist entry into the United States more efficient.[94]

D. THE LEGISLATION FAILS TO ADEQUATELY CREATE A BOARD TO PROTECT CIVIL LIBERTIES

We also believe the legislation fails to establish a civil liberties board that could adequately protect our rights. Chief among the recommendations of the 9/11 Commission was the establishment of a government wide watchdog to safeguard civil liberties. The Commission found that currently "there is no office within the government whose job it is to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered."[95] The Commission recognized, however, that both "the substantial new powers [vested] in the investigative agencies of the government"[96] by the USA PATRIOT Act, as well as its own recommendations calling "for the government to

[92] The amendment was defeated by a vote of 12–18.
[93] 9/11 Commission Report at 385.
[94] Immigration Sign-On Letter at 2.
[95] 9/11 Commission Report at 395.
[96] Id. at 394.

increase its presence in our lives,"[97] require that "should be a voice within the executive branch"[98] to address civil liberties concerns.

Surprisingly, H.R. 10 as introduced did not create a government wide civil liberties board. Instead, the bill only designated a single civil liberties officer for the intelligence community. To remedy this flagrant omission, Rep. Watt, along with Reps. Nadler and Schiff, offered an amendment that would have established a strong, independent, bipartisan agency within the executive branch.[99] After hours of negotiation, the Chairman introduced a substitute amendment that represents the product of bipartisan compromise in all save one respect. The Chairman's amendment stripped the proposed board of administrative subpoena power.[100]

Although we believe that H.R. 10 as amended is improved by the establishment of a Civil Liberties Board, we are deeply concerned that without the necessary authority to receive and evaluate relevant data concerning the privacy and civil liberties implications of anti-terrorism efforts the Board will be nothing more than a toothless tiger. Even worse, we run the risk of not only creating a Board that is useless and ineffective, but one whose uninformed findings will nevertheless put forward the illusion of civil liberties oversight.

The need to ensure that a Civil Liberties Board possesses adequate authority to perform its duties is reflected in each major bill introduced to implement the recommendations of the 9/11 Commission. For example, the McCain/Lieberman bill, S. 2774, establishes a five-member Privacy and Civil Liberties Oversight board within the Executive Office of the President (EOP).[101] Similarly, S. 2845, the Collins/Lieberman bill also provides for the establishment of a five-member Privacy and Civil Liberties Oversight board within the EOP. Both bills contain a provision authorizing the Board to issue a subpoena when necessary to carry out its duties.

The duties of a civil liberties board, as contemplated by the 9/11 Commission, makes access to information critical to its success. The civil liberties board is established to safeguard our constitutional freedoms as we develop new tools for gathering and sharing information to prevent and combat terrorism. In introducing S. 2774, Sen. McCain said:

> All of us who are concerned with threats to this Nation's security also wish to ensure that our efforts to protect Americans do not infringe on our civil liberties. After all, giving up the way of life we have fought so hard to defend

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[97] Id. at 393.

[98] Id. at 395.

[99] At the request of Chairman Sensenbrenner, Rep. Watt withdrew the amendment to negotiate the scope of the proposed Board's powers and the parameters of its access to relevant information.

[100] The authority to issue a subpoena in the Watt-Nadler-Schiff amendment is identical to that in S. 2774. The provision reads in pertinent part:

> (g) ACCESS TO INFORMATION.—
>
> (1) AUTHORIZATION.—If determined by the Board to be necessary to carry out its responsibilities under this section, the Board may—
>
> (D) require, by subpoena, persons other than Federal executive departments and agencies to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

The Watt/Nadler/Schiff amendment imposed the additional requirement that subpoenas be issued only with the approval of a majority of the Board. A separate provision required voluntary compliance by Federal agencies with requests for information from the Board.

[101] The Shays/Maloney companion bill, H.R. 5040 was introduced in the House and referred to 10 committees.

> is not an acceptable price for greater security. We must find a way to balance the two, and this is what this bill proposes to do. It creates a Privacy and Civil Liberties Board * * * to analyze * * * the enhanced security measures taken by our government and to ensure that civil liberties are appropriately considered as these policies are developed.[102]

The enhanced security authority vested in our government in the aftermath of 9/11 is unprecedented and necessarily broad. Virtually every postmortem evaluation of the incidents leading up to the terrorists attacks on September 11, 2001 has identified improvement in the government's ability to share information as the most urgent task to combat and prevent acts of terrorism in the future.[103] As a result, key changes have been proposed and/or implemented to ease the flow of information among government entities at every level within the United States, the private sector, and certain foreign governments.[104] In addition, the 9/11 Commission also made recommendations that would expand collaboration with and among government and the private sector.

Interestingly, almost simultaneously with the markup of H.R. 10, a U.S. District Court judge found the FBI's use of a "national security letter" unconstitutional because it allows the FBI to demand customer information from Internet service providers without judicial oversight or public review. In the course of analyzing the constitutionality of the FBI's use of a national security letter ("NSL"), the court distinguished between NSL's and administrative subpoenas. "Ordinary administrative subpoenas," the court observed, "may be issued by most federal agencies, as authorized by the hundreds of applicable statutes in federal law."[105] But, "[u]nlike the NSL statutes, most administrative subpoena laws either contain no

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[102] Congressional Record, S8866 (Sept. 7, 2004).

[103] See Markle Foundation, Task Force on National Security in the Information Age, Protecting America's Freedom in the Information Age (2002).

[104] Several of the provisions in the USA PATRIOT Act that are set to expire next year implicate privacy interests and civil liberties. For example, subsection 203(b) grants law enforcement officials authority to share electronic, wire, and oral interception information with intelligence, protective, immigration, national defense and national security officials. Subsection 203(d) allows the sharing of foreign intelligence and counterintelligence information as well. Others ease the burden on government to acquire personal information in the first instance. For example, section 209 relaxes the standard required by some courts prior to 9/11 for seizing voice mail messages. By treating voice mail like e-mail, section 209 permits its seizure by search warrant as opposed to the more demanding wiretap order previously held to apply. Similarly, sections 212 and 217 permit easier government access to electronic communications with the assistance of service providers.

For example, existing programs designed in whole or in part to target terrorist travel include the Terrorism Information Awareness (TIA), the Computer Assisted Passenger Prescreening System (CAPPS), the Multi-State Anti-Terrorism Information Exchange (MATRIX) Pilot Project, and the United States Visitor and Immigrant Status Indicator Technology program (US–VISIT). A recent Congressional Research Service report notes that "[t]hese programs necessarily require enhanced information sharing by government agencies and the private sector, and are designed to assist the information needs of intelligence and national security. * * * [Nevertheless, w]hile the benefits from the use of advanced technologies for antiterrorism efforts are clear, the risks to individual privacy and the potential for abuse and harm to individual liberty by Government officials and employees deploying such technologies are equally established." Congressional Research Service, USA Patriot Act Sunset: Provisions That Expire on December 31, 2005 7 (Aug. 2004).

[105] Doe v. Ashcroft, 2004 WL 2185571 (S.D.N.Y.) (Sept. 28, 2004), at 8. "For example, the Internal Revenue Service (IRS) may issue subpoenas to investigate possible violations of the tax code, and the Securities Exchange Commission (SEC) may issue subpoenas to investigate possible violations of the securities laws. More obscure examples include the Secretary of Commerce power to issue subpoenas in investigating and enforcing halibut fishing laws." Id. (citations omitted).

provision requiring secrecy, or allow only limited secrecy in special cases."[106]

Thus, at the same time a court determined that the government's use of information gathering tools unconstitutionally encroaches on the Bill of Rights, this Committee denies the civil liberties watchdog authority to obtain relevant information from those to whom such substantial power has been vested. This approach is flawed for several reasons. First and most important, one need only look to the experience of the very Commission from which the recommendation to establish a civil liberties board emanates; simply put, without its subpoena powers, which extended to the federal government, the 9/11 Commission could not have accomplished its charge.[107]

Second, on August 27, 2004, the President issued Executive Order 13353, establishing the "President's Board on Safeguarding Americans' Civil Liberties." The E.O. 13353 board clearly is an advisory board designed to assist the President and his Administration in developing and implementing homeland security functions that may have an impact on civil liberties. The board consists exclusively of Administration insiders and, while admirable, cannot perform the vitally important task of the government wide civil liberties board as conceived by the 9/11 Commission. Yet, the Executive Order authorizes the President's board to "obtain information and advice relating to the Policy from representatives of entities or individuals outside the executive branch of the Federal Government." Moreover, the Executive Order expressly authorizes the Board to "establish one or more committees that include individuals from outside the executive branch of the Federal Government * * * to advise the Board on specific issues * * * [and] carry out its functions separately from the Board." Ironically, H.R. 10 as amended establishes a civil liberties board that has no designated authority to obtain any information from any person or entity outside the federal government. As such, the President's advisory board has broader authority to obtain information from the private sector than the civil liberties board.

Finally, while Congress must ensure that the executive branch has the tools and resources necessary to protect the American people from further terrorists attacks, we must also ensure that the constitutional rights and liberties of all persons in the United States are not violated. The creation of a strong, oversight board consistent with that proposed by the 9/11 Commission will go a long way in safeguarding those liberties. The new relationships that will be and have been forged between government and the private sector require parallel oversight authority to ensure that those relationships are properly tailored to reconcile the security of our nation and the liberty of our citizens. We believe that there must be a mechanism in place that permits the civil liberties board to exist as an effective check and balance. The administrative subpoena is essential to fulfill this objective.

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[106] Id. at 9.

[107] See 9/11 Commission Says U.S. Agencies Slow Its Inquiry, N.Y. Times, July 9, 2003; 9/11 Commission Could Subpoena Oval Office Files, N.Y. Times, Oct. 26, 2003; Mayor Agrees to Allow Panel to Examine Sept. 11 Records, N.Y. Times, Dec. 4, 2003.

III. The Legislation Contains Civil Liability Provisions That Would Harm Terror Victims and Fail To Enhance Security

We also are concerned that the legislation contains numerous civil liability measures that would do little, if anything, to enhance our security; their only effect would be to diminish the rights of terror victims. Section 5103 allows states and localities to enter into litigation management agreements to handle all claims arising out of, relating to, or resulting from an act of terrorism. These agreements provide for a federal cause of action for claims against emergency response providers, and the federal court is to apply the law, including the choice of law principles, of the state in which the terrorist act occurred. This would be an acceptable response to terrorism-related injuries if the drafters had stopped there. Unfortunately, section 5103 overreaches by going outside the scope of the 9/11 Commission report to protect bad actors.

First, section 5103, contrary to other immunity protections given to volunteers, protects emergency responders for intentional bad acts. Although language in this section specifically states that it does not apply to any person or government entity that knowingly commits either an act of terrorism or a criminal act related to or resulting from an act of terrorism, the bill's liability restrictions would apply to persons who commit intentional torts. For example, a nurse who decides that a victim's injuries are so serious that the patient would be better off dead than alive would be immune from liability if she deliberately administered a drug into an intravenous line that killed the victim. Similarly, an emergency responder who commits a hate crime or crime of violence in the immediate aftermath of a terrorist attack would face no accountability for her actions. Finally, if a firefighter or police officer responding to an emergency while intoxicated strikes and kills a pedestrian en route, this bill would insulate him from liability.

The House consistently has rejected giving protections to intentional bad actors[108] and that policy should not be abdicated just because an act of terrorism is involved. Most, if not all, intentional misconduct is criminal. To exempt criminal misconduct caused by terrorism from the scope of the bill's protection, but not other criminal misconduct, such as assault, battery, or vehicular homicide, is unprecedented and simply bad policy.

For example, just because a terrorist act occurred does not mean that responders should get away with reckless or intentional misconduct that causes injury, such as if a paramedic responding to a terrorism emergency recklessly gives a patient a drug to which the patient is allergic even though the patient is wearing a medical alert bracelet stating the allergy. In the case of an emergency room physician treating the pelvic injuries of a pregnant woman injured during a terrorist attack, the physician could sterilize her without

[108] For example, the Volunteer Protection Act, Pub. L. 105–19, protects volunteers from negligence claims, but allows them to be held accountable for intentional misconduct. According to House Report 105–101, volunteers can only receive these protections if "the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer." Moreover, the House recently passed H.R. 1787, the "Good Samaritan Volunteer Firefighter Assistance Act" and H.R. 1084, the "Volunteer Pilot Organization Protection Act." Neither of these Good Samaritan measures protects donors of firefighting equipment or volunteer pilot organizations who fly for the public benefit from intentional torts.

her permission and be immune from punitive damages. The mere fact that an emergency worker is responding to an act of terrorism does not mean that the responder is entitled to commit criminal acts that jeopardize public safety and health.[109]

The legislation aggravates this problem by reducing the compensation victims could recover. It first eliminates punitive damages. Although rarely awarded, punitive damages punish the wrongdoer for conscious, flagrant disregard for the health and safety of others and deter other bad actors from committing future bad acts. In the area of emergency medicine, emergency response personnel could be subject to punitive damages for intentionally failing to respond to an emergency, assaulting or sexually abusing a victim, or other criminal acts, including civil rights violations. It is very important to hold wrongdoers who act with the intention to harm accountable for the injuries that they cause. By both including intentional torts in the scope of these litigation management agreements and simultaneously eliminating the possibility of punitive damages, section 5103 delivers a one-two punch that makes it difficult, if not impossible, to deter criminal misconduct and ensure public safety.

The bill further contains a collateral source provision also designed to reduce compensation.[110] Essentially, this language would allow the wrongdoers to benefit from a victim's prudent investment of insurance. Why should a victim's health or life insurer pay for the victim's injuries before the wrongdoer pays even a dime? And, is it fair for the victim's employer to pay unemployment or disability benefits before the wrongdoer is held accountable? Wrongdoers should not profit from a victim's preparedness in planning for the unforeseen, and the wrongdoer should not be the last to be held responsible for a victim's injuries.

Indeed, it is somewhat shocking that this bill would require everyone other than the wrongdoer to pay for a victim's injuries. Under this language, one could even have the preposterous result of having the collateral sources—such as the victim's health insurer and the victim's employer—paying the entire amount of damages owed while the wrongdoer pays nothing. Similarly, this provision would shift the burden from the wrongdoer to the government if the victim receives Medicare, Medicaid, Social Security disability or retirement benefits, or any other type of government support. The Majority rejected Minority efforts to protect the rights of victims to be fully compensated for their injuries.[111]

The bill would appear to unconstitutionally extend tort immunity to non-governmental entities, giving private emergency response personnel, including private hospitals and their employees, liability protections.[112] Interpreting the Eleventh Amendment to the Con-

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[109] During the markup, Rep. Watt (D–NC) offered an amendment to remove intentional torts from the scope of section 5103 in order to keep this bill consistent with other measure providing liability protections. The Majority rejected the amendment by a vote of 12–19.

[110] Section 5103 states that "any recovery by a plaintiff * * * shall be reduced by the amount of collateral source compensation * * * that a plaintiff has received or its entitled to receive as a result of * * * [an] act[] of terrorism.

[111] An amendment by Rep. Bobby Scott (D–VA) to strike the punitive damage exception and the collateral source rule was defeated by a vote of 12–19.

[112] Under section 5104, the definition of "emergency response provider" permits private, non-governmental entities to be parties to a litigation management agreement and thus receive the same liability protections as state or local government actors.

stitution, the Supreme Court has consistently held that the immunity given to federal and state governments cannot be easily transferred to private, non-governmental actors. Extending such protection is subject to the principle of the Court's "state-action doctrine" (as well as the collateral doctrine of "federal action").[113] Under the state-action doctrine, private entities must be actively supervised by the "state" in order for sovereign immunity to attach; it is not enough for a private actor, such as a private hospital or emergency room employee, to be certified or licensed by the state. In this case, the bill fails to ensure that only adequately supervised private entities receive immunity. Even though the immunity protection provided in H.R. 10 to private actors are thus unconstitutional, the Majority defeated an attempt to strike it.[114]

Unfortunately, the Majority rejected every attempt to correct the flaws in the litigation reform provisions of H.R. 10. Taken together, these provisions will have no effect in reducing the Nation's susceptibility to terrorism; they do not secure our ports or make it easier to detain terrorists. These tort reform measures illustrate clearly the overreach of the Majority's so-called "9/11 Commission Recommendations Implementation Act;" the 9/11 Commission did not call for tort reform and neither should we.

CONCLUSION

The attacks of September 11 were tragic events that brought the Nation together. Members of Congress stood shoulder to shoulder on the steps on the Capitol singing "God Bless America." Democrats in Congress united behind the President's efforts in the war on terror. This Committee worked together to craft a version of the USA PATRIOT Act that passed unanimously.

Unfortunately, where some saw an opportunity for national unity, others saw the opportunity for partisan political gain. Despite widespread public and congressional support for the unanimous and bipartisan recommendations of the 9/11 Commission, the Republican leadership authored legislation that would subject persons to torture, eliminate the judicial review of executive branch actions, permit government intrusion into our daily lives, and divert compensation away from terror victims. Congress owes the American people better than this. For these reasons, we dissent.

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[113] California Retail Liquor Dealers Ass'n v. Midcal Aluminum, 445 U.S. 97, 105 (1980) (quoting City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978)) (the concept of sovereign immunity under our constitutional system dictates that the immunity policy must be "'one that clearly articulated and affirmatively expressed as state policy'; second, the policy must be 'actively supervised by the State Itself.'"). These cases illustrated the point in the context of Sherman Act antitrust suits. The Court examined whether private actors were acting as "the state" to a point sufficient to make their anti-competitive conduct immune from the Sherman Act. Applying the above test, the Court determined that because the State was not actively involved in closely supervising the activities of the private actor, that actor could not be immune from federal law.

[114] An amendment by Rep. Scott to strike the broad grant of immunity was defeated by a vote of 12–19. This amendment was combined with an amendment to strike the limits on monetary recovery.

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ADDITIONAL DISSENTING VIEWS

We dissent from H.R. 10 because we also believe the legislation demonstrably fails to provide the needed resources to combat and respond to terrorism.

The 9/11 Commission could not have been any more clear about how homeland security assistance should be allocated: "Federal homeland security assistance should not remain a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerabilities that merit additional support. Congress should not use this money as a pork barrel."

After September 11th, the Bush administration set up two major programs to provide funding for local law enforcement agencies working to provide homeland security. The first of these programs, established for fiscal year 2003, is the State Homeland Security Grant program. In direct contradiction of the 9/11 Commission's recommendation, 40% of these funds are distributed to states as "minimum guarantees." The remainder is distributed not on the basis of threat, as recommended by the Commission, but rather on the basis of population. And just as the Commission complained, the result is that funding is not targeted to places like New York, Washington, Los Angeles, and other areas desperate for assistance.

Because the State Homeland Security Grant Program does not distribute money on the basis of threat, Congress set up a separate stream of homeland security funding for local law enforcement targeted directly for urban areas. Originally called the "high threat, high density" program, and later entitled, the "Urban Area Security Initiative," UASI provides funding based on a formula kept largely secret by the Department of Homeland Security. But because the Department of Homeland Security has decided to open up the program to more and more localities—initially only seven cities were eligible; at last count 80 cities and transportation agencies were receiving UASI funds—allocations for jurisdictions at the greatest risk have been shortchanged again.

H.R. 3266, the bill written by the Select Committee on Homeland Security, took important strides in implementing the 9/11 Commission's recommendations. It combined the two existing programs, eliminated the minimum guarantee, and ensured that funding would be distributed exclusively on the basis of threat. Incorporated as a part of the Republican 9/11 bill, H.R. 10, the Judiciary Committee veered away from the Commission's recommendations, even as Democrats made substantive improvements to the bill.

Committee Democrats made the following improvements:

Terrorism Cops eligible for funds. Under an amendment crafted by Rep. Anthony Weiner, Rep. Jerrold Nadler, and Rep. Nita Lowey, jurisdictions will be eligible to apply for federal funds to cover the salaries of police officers whose work is devoted exclusively to counterterrorism and intelligence.

Past expenditures eligible for funds. Under an amendment authored by Rep. Anthony Weiner and Rep. Jerrold Nadler, jurisdictions will be eligible to apply for federal funds to recoup past homeland security expenditures not already covered by the federal government.

Threat funding follows the threat. Under an amendment offered previously by Rep. Weiner and Rep. Nadler and included in the bill, the Department of Homeland Security will place the greatest emphasis on threat when disbursing homeland security funds. The current formula weighs population and infrastructure more heavily than threat, helping places like Wyoming, but hurting New York City.

Fake police badges loophole closed. An amendment offered by Rep. Weiner closed a loophole in the law that bans the use and sale of fake police badges. Previous law allowed exceptions for people who used badges for "decorative" or "recreational" purposes. Rep. Weiner's amendment will strip those loopholes from the law.

Additionally, Democrats were able to include language that authorizes the C.O.P.S. program. Like legislation included in this year's Department of Justice Reauthorization Bill, an amendment by Rep. Weiner reauthorizes the C.O.P.S. program through 2007, including language that would allow COPS funding to be used to pay for officers involved in religious, anti terror, or homeland security duties.

Unfortunately, committee Republicans insisted on deviating from the 9/11 Commission's recommendation. Despite Chairman Cox's best efforts to reign in his colleagues, Republicans have boosted the minimum guarantee states receive to .25 for all states, and .45 for all states with an international border. Committee Republicans defeated an amendment by Rep. Nadler to return to the Commission's recommendation by striking the minimum. And then, in an effort simply to guarantee that high risk areas getting the funding they need, Rep. Weiner offered an amendment to add a minimum guarantee of 8.5%—as much as $289 million under the authorization included in the original Cox bill—for jurisdictions like New York that "are consistently referenced in intelligence information as a terrorism target, or have previously been the site of more than one terrorism attack." That too was defeated by the committee Republicans.

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