

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**S. 2315**

To provide for the creation of the missing Armed Forces and civilian personnel Records Collection at the National Archives, to require the expeditious public transmission to the Archivist and public disclosure of missing Armed Forces and civilian personnel records, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bring Our Heroes  
5 Home Act”.

6 **SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.**

7 (a) FINDINGS AND DECLARATIONS.—Congress finds  
8 and declares the following:

9 (1) A vast number of records relating to miss-  
10 ing Armed Forces and civilian personnel have not

1        been identified, located, or transferred to the Na-  
2        tional Archives following review and declassification.  
3        Only in the rarest cases is there any legitimate need  
4        for continued protection of records pertaining to  
5        missing Armed Forces and civilian personnel who  
6        have been missing for decades.

7            (2) There has been insufficient priority placed  
8        on identifying, locating, reviewing, or declassifying  
9        records relating to missing Armed Forces and civil-  
10        ian personnel and then transferring the records to  
11        the National Archives for public access.

12           (3) Mandates for declassification set forth in  
13        multiple Executive orders have been broadly written,  
14        loosely interpreted, and often ignored by Federal  
15        agencies in possession and control of records related  
16        to missing Armed Forces and civilian personnel.

17           (4) No individual or entity has been tasked with  
18        oversight of the identification, collection, review, and  
19        declassification of records related to missing Armed  
20        Forces and civilian personnel.

21           (5) The interest, desire, workforce, and funding  
22        of Federal agencies to assemble, review, and declas-  
23        sify records relating to missing Armed Forces and  
24        civilian personnel have been lacking.

1           (6) All records of the Federal Government re-  
2 relating to missing Armed Forces and civilian per-  
3 sonnel should be preserved for historical and govern-  
4 mental purposes and for public research.

5           (7) All records of the Federal Government re-  
6 lating to missing Armed Forces and civilian per-  
7 sonnel should carry a presumption of declassifica-  
8 tion, and all such records should be disclosed under  
9 this Act to enable the fullest possible accounting for  
10 missing Armed Forces and civilian personnel.

11           (8) Legislation is necessary to create an en-  
12 forceable, independent, and accountable process for  
13 the public disclosure of records relating to missing  
14 Armed Forces and civilian personnel.

15           (9) Legislation is necessary because section 552  
16 of title 5, United States Code (commonly known as  
17 the “Freedom of Information Act”), as implemented  
18 by Federal agencies, has prevented the timely public  
19 disclosure of records relating to missing Armed  
20 Forces and civilian personnel.

21 (b) PURPOSES.—The purposes of this Act are—

22           (1) to provide for the creation of the Missing  
23 Armed Forces and Civilian Personnel Records Col-  
24 lection at the National Archives; and

1           (2) to require the expeditious public trans-  
2 mission to the Archivist and public disclosure of  
3 missing Armed Forces and civilian personnel  
4 records, subject to narrow exceptions, as set forth in  
5 this Act.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8           (1) ARCHIVIST.—The term “Archivist” means  
9 Archivist of the United States.

10           (2) COLLECTION.—The term “Collection”  
11 means the Missing Armed Forces and Civilian Per-  
12 sonnel Records Collection established under section  
13 4(a).

14           (3) DIRECTOR.—The term “Director” means  
15 the Director of the Office of Government Ethics.

16           (4) EXECUTIVE AGENCY.—The term “Executive  
17 agency” —

18                   (A) means an agency, as defined in section  
19 552(f) of title 5, United States Code;

20                   (B) includes any Executive department,  
21 military department, Government corporation,  
22 Government controlled corporation, or other es-  
23 tablishment in the executive branch of the Fed-  
24 eral Government, including the Executive Office  
25 of the President, any branch of the Armed

1 Forces, and any independent regulatory agency;  
2 and

3 (C) does not include any non-appropriated  
4 agency, department, corporation, or establish-  
5 ment.

6 (5) EXECUTIVE BRANCH MISSING ARMED  
7 FORCES AND CIVILIAN PERSONNEL RECORD.—The  
8 term “executive branch missing Armed Forces and  
9 civilian personnel record” means a missing Armed  
10 Forces and civilian personnel record of an Executive  
11 agency, or information contained in such a missing  
12 Armed Forces and civilian personnel record obtained  
13 by or developed within the executive branch of the  
14 Federal Government.

15 (6) GOVERNMENT OFFICE.—The term “Govern-  
16 ment office” means an Executive agency, the Li-  
17 brary of Congress, or the National Archives.

18 (7) MISSING ARMED FORCES AND CIVILIAN  
19 PERSONNEL.—

20 (A) DEFINITION.—The term “missing  
21 Armed Forces and civilian personnel” means  
22 one or more missing persons; and

23 (B) INCLUSIONS.—The term “missing  
24 Armed Forces and civilian personnel” includes  
25 an individual who was a missing person and

1           whose status was later changed to “missing and  
2           presumed dead”.

3           (8) MISSING ARMED FORCES AND CIVILIAN  
4           PERSONNEL RECORD.—The term “missing Armed  
5           Forces and civilian personnel record” means a  
6           record that relates, directly or indirectly, to the loss,  
7           fate, or status of missing Armed Forces and civilian  
8           personnel that—

9                   (A) was created or made available for use  
10                   by, obtained by, or otherwise came into the cus-  
11                   tody, possession, or control of—

12                           (i) any Government office;

13                           (ii) any Presidential library; or

14                           (iii) any of the Armed Forces; and

15                   (B) relates to 1 or more missing Armed  
16                   Forces and civilian personnel who became miss-  
17                   ing persons during the period—

18                           (i) beginning on December 7, 1941;

19                           and

20                           (ii) ending on the date of enactment  
21                   of this Act.

22           (9) MISSING PERSON.—The term “missing per-  
23           son” means—

1 (A) a person described in paragraph (1) of  
2 section 1513 of title 10, United States Code;  
3 and

4 (B) any other civilian employee of the Fed-  
5 eral Government or an employee of a contractor  
6 of the Federal Government who serves in direct  
7 support of, or accompanies, the Armed Forces  
8 in the field under orders and who is in a miss-  
9 ing status (as that term is defined in paragraph  
10 (2) of such section 1513).

11 (10) NATIONAL ARCHIVES.—The term “Na-  
12 tional Archives”—

13 (A) means the National Archives and  
14 Records Administration; and

15 (B) includes any component of the Na-  
16 tional Archives and Records Administration (in-  
17 cluding Presidential archival depositories estab-  
18 lished under section 2112 of title 44, United  
19 States Code).

20 (11) OFFICIAL INVESTIGATION.—The term “of-  
21 ficial investigation” means a review, briefing, in-  
22 quiry, or hearing relating to missing Armed Forces  
23 and civilian personnel conducted by a Presidential  
24 commission, committee of Congress, or agency, re-  
25 gardless of whether it is conducted independently, at

1 the request of any Presidential commission or com-  
2 mittee of Congress, or at the request of any official  
3 of the Federal Government.

4 (12) ORIGINATING BODY.—The term “origi-  
5 nating body” means the Government office or other  
6 initial source that created a record or particular in-  
7 formation within a record.

8 (13) PUBLIC INTEREST.—The term “public in-  
9 terest” means the compelling interest in the prompt  
10 public disclosure of missing Armed Forces and civil-  
11 ian personnel records for historical and govern-  
12 mental purposes, for public research, and for the  
13 purpose of fully informing the people of the United  
14 States, most importantly families of missing Armed  
15 Forces and civilian personnel, about the fate of the  
16 missing Armed Forces and civilian personnel and the  
17 process by which the Federal Government has  
18 sought to account for them.

19 (14) RECORD.—The term “record” has the  
20 meaning given the term “records” in section 3301 of  
21 title 44, United States Code.

22 (15) REVIEW BOARD.—The term “Review  
23 Board” means the Missing Armed Forces and Civil-  
24 ian Personnel Records Review Board established  
25 under section 5.

1 **SEC. 4. MISSING ARMED FORCES AND CIVILIAN PER-**  
2 **SONNEL RECORDS COLLECTION AT THE NA-**  
3 **TIONAL ARCHIVES.**

4 (a) ESTABLISHMENT OF COLLECTION.—Not later  
5 than 90 days after a quorum of the Missing Armed Forces  
6 and Civilian Personnel Records Review Board has been  
7 established under section 7, the Archivist shall—

8 (1) commence establishment of a collection of  
9 records to be known as the “Missing Armed Forces  
10 and Civilian Personnel Records Collection”;

11 (2) commence preparing the subject guidebook  
12 and index to the Collection; and

13 (3) establish criteria and acceptable formats for  
14 Executive agencies to follow when transmitting cop-  
15 ies of missing Armed Forces and civilian personnel  
16 records to the Archivist, to include required  
17 metadata.

18 (b) REGULATIONS.—Not later than 90 days after the  
19 date of the swearing in of the Board members, the Review  
20 Board shall promulgate rules to establish guidelines and  
21 processes for the disclosure of records contained in the  
22 Collection.

23 (c) OVERSIGHT.—

24 (1) SENATE.—The Committee on Homeland  
25 Security and Governmental Affairs of the Senate  
26 shall have continuing jurisdiction, including legisla-

1           tive oversight jurisdiction, in the Senate with respect  
2           to the Collection.

3           (2) HOUSE OF REPRESENTATIVES.—The Com-  
4           mittee on Oversight and Accountability of the House  
5           of Representatives shall have continuing jurisdiction,  
6           including legislative oversight jurisdiction, in the  
7           House of Representatives with respect to the Collec-  
8           tion.

9   **SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE**  
10                   **NATIONAL ARCHIVES, AND PUBLIC DISCLO-**  
11                   **SURE OF MISSING ARMED FORCES AND CI-**  
12                   **VILIAN PERSONNEL RECORDS BY GOVERN-**  
13                   **MENT OFFICES.**

14           (a) IN GENERAL.—

15           (1) PREPARATION.—As soon as practicable  
16           after the date of enactment of this Act, and suffi-  
17           ciently in advance of the deadlines established under  
18           this Act, each Government office shall—

19           (A) identify and locate any missing Armed  
20           Forces and civilian personnel records in the  
21           custody, possession, or control of the Govern-  
22           ment office, including intelligence reports, con-  
23           gressional inquiries, memoranda to or from the  
24           White House and other Federal departments  
25           and agencies, Prisoner of War (POW)

1           debriefings, live sighting reports, documents re-  
2           lating to POW camps, movement of POWs, ex-  
3           ploitation of POWs, experimentation on POWs,  
4           or status changes from Missing in Action  
5           (MIA) to Killed in Action (KIA); and

6                   (B) prepare for transmission to the Archi-  
7           vist in accordance with the criteria and accept-  
8           able formats established by the Archivist a copy  
9           of any missing Armed Forces and civilian per-  
10          sonnel records that have not previously been  
11          transmitted to the Archivist by the Government  
12          office.

13          (2) CERTIFICATION.—Each Government office  
14          shall submit to the Archivist, under penalty of per-  
15          jury, a certification indicating—

16                   (A) whether the Government office has  
17           conducted a thorough search for all missing  
18           Armed Forces and civilian personnel records in  
19           the custody, possession, or control of the Gov-  
20           ernment office; and

21                   (B) whether a copy of any missing Armed  
22           Forces and civilian personnel record has not  
23           been transmitted to the Archivist.

1           (3) PRESERVATION.—No missing Armed Forces  
2           and civilian personnel record shall be destroyed, al-  
3           tered, or mutilated in any way.

4           (4) EFFECT OF PREVIOUS DISCLOSURE.—Infor-  
5           mation that was made available or disclosed to the  
6           public before the date of enactment of this Act in a  
7           missing Armed Forces and civilian personnel record  
8           may not be withheld, redacted, postponed for public  
9           disclosure, or reclassified.

10          (5) WITHHELD AND SUBSTANTIALLY RE-  
11          DACTED RECORDS.—For any missing Armed Forces  
12          and civilian personnel record that is transmitted to  
13          the Archivist which a Government office proposes to  
14          substantially redact or withhold in full from public  
15          access, the head of the Government office shall sub-  
16          mit an unclassified and publicly releasable report to  
17          the Archivist, the Review Board, and each appro-  
18          priate committee of the Senate and the House of  
19          Representatives justifying the decision of the Gov-  
20          ernment office to substantially redact or withhold  
21          the record by demonstrating that the release of in-  
22          formation would clearly and demonstrably be ex-  
23          pected to cause an articulated harm, and that the  
24          harm would be of such gravity as to outweigh the  
25          public interest in access to the information.

1 (b) REVIEW.—

2 (1) IN GENERAL.—Except as provided under  
3 paragraph (5), not later than 180 days after a  
4 quorum of the Missing Armed Forces and Civilian  
5 Personnel Records Review Board has been estab-  
6 lished under section 7, each Government office shall,  
7 in accordance with the criteria and acceptable for-  
8 mats established by the Archivist—

9 (A) identify, locate, copy, and review each  
10 missing Armed Forces and civilian personnel  
11 record in the custody, possession, or control of  
12 the Government office for transmission to the  
13 Archivist and disclosure to the public or, if  
14 needed, review by the Review Board; and

15 (B) cooperate fully, in consultation with  
16 the Archivist, in carrying out paragraph (3).

17 (2) REQUIREMENT.—The Review Board shall  
18 promulgate rules for the disclosure of relevant  
19 records by Government offices under paragraph (1).

20 (3) NATIONAL ARCHIVES RECORDS.—Not later  
21 than 180 days after a quorum of the Missing Armed  
22 Forces and Civilian Personnel Records Review  
23 Board has been established under section 7, the Ar-  
24 chivist shall—

1           (A) locate and identify all missing Armed  
2 Forces and civilian personnel records in the  
3 custody of the National Archives as of the date  
4 of enactment of this Act that remain classified,  
5 in whole or in part;

6           (B) notify a Government office if the Ar-  
7 chivist locates and identifies a record of the  
8 Government office under subparagraph (A); and

9           (C) make each classified missing Armed  
10 Forces and civilian personnel record located and  
11 identified under subparagraph (A) available for  
12 review by Executive agencies through the Na-  
13 tional Declassification Center established under  
14 Executive Order 13526 or any successor order.

15       (4) RECORDS ALREADY PUBLIC.—A missing  
16 Armed Forces and civilian personnel record that is  
17 in the custody of the National Archives on the date  
18 of enactment of this Act and that has been publicly  
19 available in its entirety without redaction shall be  
20 made available in the Collection without any addi-  
21 tional review by the Archivist, the Review Board, or  
22 any other Government office under this Act.

23       (5) EXEMPTIONS.—

24           (A) DEPARTMENT OF DEFENSE POW/MIA  
25 ACCOUNTING AGENCY.—The Defense POW/

1 MIA Accounting Agency (DPAA) is exempt  
2 from the requirement under this subsection to  
3 declassify and transmit to the Archivist docu-  
4 ments in its custody or control that pertain to  
5 a specific case or cases that DPAA is actively  
6 investigating or developing for the purpose of  
7 locating, disinterring, or identifying a missing  
8 member of the Armed Forces

9 (B) DEPARTMENT OF DEFENSE MILITARY  
10 SERVICE CASUALTY OFFICES AND DEPARTMENT  
11 OF STATE SERVICE CASUALTY OFFICES.—The  
12 Department of Defense Military Service Cas-  
13 ualty Offices and the Department of State  
14 Service Casualty Offices are exempt from the  
15 requirement to declassify and transmit to the  
16 Archivist documents in their custody or control  
17 that pertain to individual cases with respect to  
18 which the office is lending support and assist-  
19 ance to the families of missing individuals.

20 (c) TRANSMISSION TO THE NATIONAL ARCHIVES.—  
21 Each Government office shall—

22 (1) not later than 180 days after a quorum of  
23 the Missing Armed Forces and Civilian Personnel  
24 Records Review Board has been established under  
25 section 7, commence transmission to the Archivist of

1 copies of the missing Armed Forces and civilian per-  
2 sonnel records in the custody, possession, or control  
3 of the Government office; and

4 (2) not later than 1 year after a quorum of the  
5 Missing Armed Forces and Civilian Personnel  
6 Records Review Board has been established under  
7 section 7, complete transmission to the Archivist of  
8 copies of all missing Armed Forces and civilian per-  
9 sonnel records in the possession or control of the  
10 Government office.

11 (d) PERIODIC REVIEW OF POSTPONED MISSING  
12 ARMED FORCES AND CIVILIAN PERSONNEL RECORDS.—

13 (1) IN GENERAL.—All missing Armed Forces  
14 and civilian personnel records, or information within  
15 a missing Armed Forces and civilian personnel  
16 record, the public disclosure of which has been post-  
17 poned under the standards under this Act shall be  
18 reviewed by the originating body—

19 (A)(i) periodically, but not less than every  
20 5 years, after the date on which the Review  
21 Board terminates under section 7(o); and

22 (ii) at the direction of the Archivist; and

23 (B) consistent with the recommendations  
24 of the Review Board under section 9(b)(3)(B).

25 (2) CONTENTS.—

1           (A) IN GENERAL.—A periodic review of a  
2 missing Armed Forces and civilian personnel  
3 record, or information within a missing Armed  
4 Forces and civilian personnel record, by the  
5 originating body shall address the public disclo-  
6 sure of the missing Armed Forces and civilian  
7 personnel record under the standards under  
8 this Act.

9           (B) CONTINUED POSTPONEMENT.—If an  
10 originating body conducting a periodic review of  
11 a missing Armed Forces and civilian personnel  
12 record, or information within a missing Armed  
13 Forces and civilian personnel record, the public  
14 disclosure of which has been postponed under  
15 the standards under this Act, determines that  
16 continued postponement is required, the origi-  
17 nating body shall provide to the Archivist an  
18 unclassified written description of the reason  
19 for the continued postponement that the Archi-  
20 vist shall highlight and make accessible on a  
21 publicly accessible website administered by the  
22 National Archives.

23           (C) SCOPE.—The periodic review of post-  
24 poned missing Armed Forces and civilian per-  
25 sonnel records, or information within a missing

1 Armed Forces and civilian personnel record,  
2 shall serve the purpose stated in section  
3 2(b)(2), to provide expeditious public disclosure  
4 of missing Armed Forces and civilian personnel  
5 records, to the fullest extent possible, subject  
6 only to the grounds for postponement of dislo-  
7 sure under section 6.

8 (D) DISCLOSURE ABSENT CERTIFICATION  
9 BY PRESIDENT.—Not later than 10 years after  
10 a quorum of the Missing Armed Forces and Ci-  
11 vilian Personnel Records Review Board has  
12 been established under section 7, all missing  
13 Armed Forces and civilian personnel records,  
14 and information within a missing Armed Forces  
15 and civilian personnel record, shall be publicly  
16 disclosed in full, and available in the Collection,  
17 unless—

18 (i) the head of the originating body,  
19 Executive agency, or other Government of-  
20 fice recommends in writing that continued  
21 postponement is necessary;

22 (ii) the written recommendation de-  
23 scribed in clause (i)—

24 (I) is provided to the Archivist in  
25 unclassified and publicly releasable

1 form not later than 180 days before  
2 the date that is 10 years after a  
3 quorum of the Missing Armed Forces  
4 and Civilian Personnel Records Re-  
5 view Board has been established  
6 under section 7; and

7 (II) includes—

8 (aa) a justification of the  
9 recommendation to postpone dis-  
10 closure with clear and convincing  
11 evidence that the identifiable  
12 harm is of such gravity that it  
13 outweighs the public interest in  
14 disclosure; and

15 (bb) a recommended speci-  
16 fied time at which or a specified  
17 occurrence following which the  
18 material may be appropriately  
19 disclosed to the public under this  
20 Act;

21 (iii) the Archivist transmits all rec-  
22 ommended postponements and the rec-  
23 ommendation of the Archivist to the Presi-  
24 dent not later than 90 days before the date  
25 that is 10 years after the date a quorum

1 of the Missing Armed Forces and Civilian  
2 Personnel Records Review Board has been  
3 established under section 7; and

4 (iv) the President transmits to the Ar-  
5 chivist a certification indicating that con-  
6 tinued postponement is necessary and the  
7 identifiable harm, as demonstrated by clear  
8 and convincing evidence, is of such gravity  
9 that it outweighs the public interest in dis-  
10 closure not later than the date that is 10  
11 years after a quorum of the Missing  
12 Armed Forces and Civilian Personnel  
13 Records Review Board has been estab-  
14 lished under section 7.

15 **SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**  
16 **SURE OF RECORDS.**

17 (a) IN GENERAL.—Disclosure to the public of a miss-  
18 ing Armed Forces and civilian personnel record or par-  
19 ticular information in a missing Armed Forces and civilian  
20 personnel record created after the date that is 25 years  
21 before the date of the review of the missing Armed Forces  
22 and civilian personnel record by the Archivist may be post-  
23 poned subject to the limitations under this Act only—

24 (1) if it pertains to—

1 (A) military plans, weapons systems, or op-  
2 erations;

3 (B) foreign government information;

4 (C) intelligence activities (including covert  
5 action), intelligence sources or methods, or  
6 cryptology;

7 (D) foreign relations or foreign activities of  
8 the United States, including confidential  
9 sources;

10 (E) scientific, technological, or economic  
11 matters relating to the national security;

12 (F) United States Government programs  
13 for safeguarding nuclear materials or facilities;

14 (G) vulnerabilities or capabilities of sys-  
15 tems, installations, infrastructures, projects,  
16 plans, or protection services relating to the na-  
17 tional security; or

18 (H) the development, production, or use of  
19 weapons of mass destruction; and

20 (2) the threat posed by the public disclosure of  
21 the missing Armed Forces and civilian personnel  
22 record or information is of such gravity that it out-  
23 weighs the public interest in disclosure.

24 (b) OLDER RECORDS.—Disclosure to the public of a  
25 missing Armed Forces and civilian personnel record or

1 particular information in a missing Armed Forces and ci-  
2 vilian personnel record created on or before the date that  
3 is 25 years before the date of the review of the missing  
4 Armed Forces and civilian personnel record by the Archi-  
5 vist may be postponed subject to the limitations under this  
6 Act only if, as demonstrated by clear and convincing evi-  
7 dence—

8 (1) the release of the information would be ex-  
9 pected to—

10 (A) reveal the identity of a confidential  
11 human source, a human intelligence source, a  
12 relationship with an intelligence or security  
13 service of a foreign government or international  
14 organization, or a nonhuman intelligence  
15 source, or impair the effectiveness of an intel-  
16 ligence method currently in use, available for  
17 use, or under development;

18 (B) reveal information that would impair  
19 United States cryptologic systems or activities;

20 (C) reveal formally named or numbered  
21 United States military war plans that remain in  
22 effect, or reveal operational or tactical elements  
23 of prior plans that are contained in such active  
24 plans; or

1           (D) reveal information, including foreign  
2           government information, that would cause seri-  
3           ous harm to relations between the United  
4           States and a foreign government, or to ongoing  
5           diplomatic activities of the United States; and

6           (2) the threat posed by the public disclosure of  
7           the missing Armed Forces and civilian personnel  
8           record or information is of such gravity that it out-  
9           weighs the public interest in disclosure.

10          (c) EXCEPTION.—Regardless of the date on which a  
11          missing Armed Forces and civilian personnel record was  
12          created, disclosure to the public of information in the  
13          missing Armed Forces and civilian personnel record may  
14          be postponed if—

15               (1) the public disclosure of the information  
16               would reveal the name or identity of a living person  
17               who provided confidential information to the United  
18               States and would pose a substantial risk of harm to  
19               that person;

20               (2) the public disclosure of the information  
21               could reasonably be expected to constitute an unwar-  
22               ranted invasion of personal privacy, and that inva-  
23               sion of privacy is so substantial that it outweighs the  
24               public interest;

1           (3) the public disclosure of the information  
2           could reasonably be expected to cause harm to the  
3           methods currently in use or available for use by  
4           members of the Armed Forces to survive, evade, re-  
5           sist, or escape; or

6           (4) the public disclosure of such information  
7           would conflict with United States law or regulations.

8 **SEC. 7. ESTABLISHMENT AND POWERS OF THE MISSING**  
9                                   **ARMED FORCES AND CIVILIAN PERSONNEL**  
10                                   **RECORDS REVIEW BOARD.**

11           (a) **ESTABLISHMENT.**—There is established as an  
12 independent establishment in the executive branch a board  
13 to be known as the “Missing Armed Forces and Civilian  
14 Personnel Records Review Board” to ensure and facilitate  
15 the review, transmission to the Archivist, and public dis-  
16 closure of missing Armed Forces and civilian personnel  
17 records.

18           (b) **MEMBERSHIP.**—

19           (1) **APPOINTMENTS.**—The Review Board shall  
20 be composed of 5 members appointed by the Presi-  
21 dent, of whom—

22                                   (A) 1 shall be appointed by the President,  
23 in consultation with the Archivist of the United  
24 States and by and with the advice and consent

1 of the Senate, and shall serve as the Chair-  
2 person of the Review Board;

3 (B) 1 shall be recommended by the major-  
4 ity leader of the Senate;

5 (C) 1 shall be recommended by the minor-  
6 ity leader of the Senate;

7 (D) 1 shall be recommended by the Speak-  
8 er of the House of Representatives; and

9 (E) 1 shall be recommended by the minor-  
10 ity leader of the House of Representatives.

11 (2) QUALIFICATIONS.—The members of the Re-  
12 view Board shall—

13 (A) be appointed without regard to polit-  
14 ical affiliation;

15 (B) be citizens of the United States of in-  
16 tegrity and impartiality;

17 (C) not be employees of an Executive agen-  
18 cy on the date of the appointment;

19 (D) have high national professional reputa-  
20 tion in their fields and be capable of exercising  
21 the independent and objective judgment nec-  
22 essary to the fulfillment of their role in ensur-  
23 ing and facilitating the identification, location,  
24 review, transmission to the Archivist, and public

1 disclosure of missing Armed Forces and civilian  
2 personnel records;

3 (E) possess an appreciation of the value of  
4 missing Armed Forces and civilian personnel  
5 records to scholars, the Federal Government,  
6 and the public, particularly families of missing  
7 Armed Forces and civilian personnel;

8 (F) include at least 1 professional histo-  
9 rian; and

10 (G) include at least 1 attorney.

11 (3) CONSULTATION WITH THE OFFICE OF GOV-  
12 ERNMENT ETHICS.—In considering persons to be ap-  
13 pointed to the Review Board, the President shall  
14 consult with the Director of the Office of Govern-  
15 ment Ethics to—

16 (A) determine criteria for possible conflicts  
17 of interest of members of the Review Board,  
18 consistent with ethics laws, statutes, and regu-  
19 lations for executive branch employees; and

20 (B) ensure that no individual selected for  
21 such position of member of the Review Board  
22 possesses a conflict of interest as so deter-  
23 mined.

24 (4) CONSULTATION.—Appointments to the Re-  
25 view Board shall be made after considering individ-

1 uals recommended by the American Historical Asso-  
2 ciation, the Organization of American Historians,  
3 the Society of American Archivists, the American  
4 Bar Association, veterans' organizations, and organi-  
5 zations representing families of missing Armed  
6 Forces and civilian personnel.

7 (c) SECURITY CLEARANCES.—The appropriate de-  
8 partments, agencies, and elements of the executive branch  
9 of the Federal Government shall cooperate to ensure that  
10 an application by an individual nominated to be a member  
11 of the Review Board, seeking security clearances necessary  
12 to carry out the duties of the Review Board, is expedi-  
13 tiously reviewed and granted or denied.

14 (d) CONSIDERATION BY THE SENATE.—Nominations  
15 for appointment under subsection (b)(1)(A) shall be re-  
16 ferred to the Committee on Homeland Security and Gov-  
17 ernmental Affairs of the Senate for consideration.

18 (e) VACANCY.—Not later than 60 days after the date  
19 on which a vacancy on the Review Board occurs, the va-  
20 cancy shall be filled in the same manner as specified for  
21 original appointment.

22 (f) CHAIRPERSON NEEDED FOR QUORUM.—A major-  
23 ity of the members of the Review Board, including the  
24 Chairperson appointed and confirmed pursuant to sub-  
25 section (b)(1)(A), shall constitute a quorum.

1 (g) REMOVAL OF REVIEW BOARD MEMBER.—

2 (1) IN GENERAL.—A member of the Review  
3 Board shall not be removed from office, other  
4 than—

5 (A) by impeachment by Congress; or

6 (B) by the action of the President for inef-  
7 ficiency, neglect of duty, malfeasance in office,  
8 physical disability, mental incapacity, or any  
9 other condition that substantially impairs the  
10 performance of the member's duties.

11 (2) JUDICIAL REVIEW.—

12 (A) IN GENERAL.—A member of the Re-  
13 view Board removed from office may obtain ju-  
14 dicial review of the removal in a civil action  
15 commenced in the United States District Court  
16 for the District of Columbia.

17 (B) RELIEF.—The member may be rein-  
18 stated or granted other appropriate relief by  
19 order of the court.

20 (3) NOTICE OF REMOVAL.—If a member of the  
21 Review Board is removed from office, and that re-  
22 moval is by the President, not later than 10 days  
23 after the removal, the President shall submit to the  
24 leadership of Congress, the Committee on Homeland  
25 Security and Governmental Affairs of the Senate

1 and the Committee on Oversight and Reform of the  
2 House of Representatives a report specifying the  
3 facts found and the grounds for the removal.

4 (h) COMPENSATION OF MEMBERS.—

5 (1) BASIC PAY.—A member of the Review  
6 Board shall be treated as an employee of the execu-  
7 tive branch and compensated at a rate equal to the  
8 daily equivalent of the annual rate of basic pay pre-  
9 scribed for level IV of the Executive Schedule under  
10 section 5315 of title 5, United States Code, for each  
11 day (including travel time) during which the member  
12 is engaged in the performance of the duties of the  
13 Review Board.

14 (2) TRAVEL EXPENSES.—A member of the Re-  
15 view Board shall be allowed reasonable travel ex-  
16 penses, including per diem in lieu of subsistence, at  
17 rates for employees of agencies under subchapter I  
18 of chapter 57 of title 5, United States Code, while  
19 away from the member's home or regular place of  
20 business in the performance of services for the Re-  
21 view Board.

22 (i) DUTIES OF THE REVIEW BOARD.—

23 (1) IN GENERAL.—The Review Board shall con-  
24 sider and render a decision on a determination by a  
25 Government office to seek to postpone the disclosure

1 of a missing Armed Forces and civilian personnel  
2 record, in whole or in part.

3 (2) RECORDS.—In carrying out paragraph (1),  
4 the Review Board shall consider and render a deci-  
5 sion regarding—

6 (A) whether a record constitutes a missing  
7 Armed Forces and civilian personnel record;  
8 and

9 (B) whether a missing Armed Forces and  
10 civilian personnel record, or particular informa-  
11 tion in a missing Armed Forces and civilian  
12 personnel record, qualifies for postponement of  
13 disclosure under this Act.

14 (j) POWERS.—The Review Board shall have the au-  
15 thority to act in a manner prescribed under this Act, in-  
16 cluding authority to—

17 (1) direct Government offices to transmit to the  
18 Archivist missing Armed Forces and civilian per-  
19 sonnel records as required under this Act;

20 (2) direct Government offices to transmit to the  
21 Archivist substitutes and summaries of missing  
22 Armed Forces and civilian personnel records that  
23 can be publicly disclosed to the fullest extent for any  
24 missing Armed Forces and civilian personnel record

1 that is proposed for postponement in full or that is  
2 substantially redacted;

3 (3) obtain access to missing Armed Forces and  
4 civilian personnel records that have been identified  
5 by a Government office;

6 (4) direct a Government office to make avail-  
7 able to the Review Board, and if necessary inves-  
8 tigate the facts surrounding, additional information,  
9 records, or testimony from individuals, which the  
10 Review Board has reason to believe is required to  
11 fulfill its functions and responsibilities under this  
12 Act;

13 (5) hold such hearings, sit and act at such  
14 times and places, take such testimony, receive such  
15 evidence, and administer such oaths as the Review  
16 Board considers advisable to carry out its respon-  
17 sibilities under this Act;

18 (6) hold individuals in contempt for failure to  
19 comply with directives and mandates issued by the  
20 Review Board under this Act, which shall not in-  
21 clude the authority to imprison or fine any indi-  
22 vidual;

23 (7) require any Government office to account in  
24 writing for the destruction of any records relating to

1 the loss, fate, or status of missing Armed Forces  
2 and civilian personnel;

3 (8) receive information from the public regard-  
4 ing the identification and public disclosure of miss-  
5 ing Armed Forces and civilian personnel records;  
6 and

7 (9) make a final determination regarding  
8 whether a missing Armed Forces and civilian per-  
9 sonnel record will be disclosed to the public or dis-  
10 closure of the missing Armed Forces and civilian  
11 personnel record to the public will be postponed, not-  
12 withstanding the determination of an Executive  
13 agency.

14 (k) WITNESS IMMUNITY.—The Review Board shall  
15 be considered to be an agency of the United States for  
16 purposes of section 6001 of title 18, United States Code.

17 (l) OVERSIGHT.—

18 (1) IN GENERAL.—The Committee on Home-  
19 land Security and Governmental Affairs of the Sen-  
20 ate and the Committee on Oversight and Reform of  
21 the House of Representatives shall—

22 (A) have continuing legislative oversight  
23 jurisdiction with respect to the official conduct  
24 of the Review Board and the disposition of

1           postponed records after termination of the Re-  
2           view Board; and

3                   (B) not later than 10 days after submit-  
4           ting a request, be provided access to any  
5           records held or created by the Review Board.

6           (2) DUTY OF REVIEW BOARD.—The Review  
7           Board shall have the duty to cooperate with the ex-  
8           ercise of oversight jurisdiction under paragraph (1).

9           (3) SECURITY CLEARANCES.—The Chairman  
10          and Ranking Members of the Committee on Home-  
11          land Security and Governmental Affairs of the Sen-  
12          ate and the Committee on Oversight and Account-  
13          ability of the House of Representatives, and des-  
14          ignated Committee staff, shall be granted all secu-  
15          rity clearances and accesses held by the Review  
16          Board, including to relevant Presidential and depart-  
17          ment or agency special access and compartmented  
18          access programs.

19          (m) SUPPORT SERVICES.—The Administrator of the  
20          General Services Administration shall provide administra-  
21          tive services for the Review Board on a reimbursable basis.

22          (n) INTERPRETIVE REGULATIONS.—The Review  
23          Board may issue interpretive regulations.

24          (o) TERMINATION AND WINDING UP.—

1           (1) IN GENERAL.—Two years after the date of  
2           enactment of this Act, the Review Board shall, by  
3           majority vote, determine whether all Government of-  
4           fices have complied with the obligations, mandates,  
5           and directives under this Act.

6           (2) TERMINATION DATE.—The Review Board  
7           shall terminate on the date that is 4 years after the  
8           date of swearing in of the Board members.

9           (3) REPORT.—Before the termination of the  
10          Review Board under paragraph (2), the Review  
11          Board shall submit to Congress reports, including a  
12          complete and accurate accounting of expenditures  
13          during its existence, and shall complete all other re-  
14          porting requirements under this Act.

15          (4) RECORDS.—Upon termination of the Re-  
16          view Board, the Review Board shall transfer all  
17          records of the Review Board to the Archivist for in-  
18          clusion in the Collection, and no record of the Re-  
19          view Board shall be destroyed.

20 **SEC. 8. MISSING ARMED FORCES AND CIVILIAN PER-**  
21 **SONNEL RECORDS REVIEW BOARD PER-**  
22 **SONNEL.**

23          (a) EXECUTIVE DIRECTOR.—

24               (1) IN GENERAL.—Not later than 45 days after  
25          the initial meeting of the Review Board, the Review

1 Board shall appoint an individual to the position of  
2 Executive Director.

3 (2) QUALIFICATIONS.—The individual ap-  
4 pointed as Executive Director of the Review  
5 Board—

6 (A) shall be a citizen of the United States  
7 of integrity and impartiality;

8 (B) shall be appointed without regard to  
9 political affiliation; and

10 (C) shall not have any conflict of interest  
11 with the mission of the Review Board.

12 (3) CONSULTATION WITH THE OFFICE OF GOV-  
13 ERNMENT ETHICS.—In their consideration of the  
14 person to be appointed to the position of Executive  
15 Director of the Review Board, the Review Board  
16 shall consult with the Director of the Office of Gov-  
17 ernment Ethics to—

18 (A) determine criteria for possible conflicts  
19 of interest of the Executive Director of the Re-  
20 view Board, consistent with ethics laws, stat-  
21 utes, and regulations for executive branch em-  
22 ployees; and

23 (B) ensure that no individual selected for  
24 such position of Executive Director of the Re-

1 view Board possesses a conflict of interest as so  
2 determined.

3 (4) SECURITY CLEARANCE.—

4 (A) LIMIT ON APPOINTMENT.—The Review  
5 Board shall not appoint an individual as Execu-  
6 tive Director until after the date on which the  
7 individual qualifies for the necessary security  
8 clearance.

9 (B) EXPEDITED PROVISION.—The appro-  
10 priate departments, agencies, and elements of  
11 the executive branch of the Federal Government  
12 shall cooperate to ensure that an application by  
13 an individual nominated to be Executive Direc-  
14 tor, seeking security clearances necessary to  
15 carry out the duties of the Executive Director,  
16 is expeditiously reviewed and granted or denied.

17 (5) DUTIES.—The Executive Director shall—

18 (A) serve as principal liaison to Govern-  
19 ment offices;

20 (B) be responsible for the administration  
21 and coordination of the review of records by the  
22 Review Board;

23 (C) be responsible for the administration  
24 of all official activities conducted by the Review  
25 Board; and

1 (D) not have the authority to decide or de-  
2 termine whether any record should be disclosed  
3 to the public or postponed for disclosure.

4 (6) REMOVAL.—The Executive Director may be  
5 removed by a majority vote of the Review Board.

6 (b) STAFF.—

7 (1) IN GENERAL.—The Review Board may, in  
8 accordance with the civil service laws, but without  
9 regard to civil service law and regulation for com-  
10 petitive service as defined in subchapter I of chapter  
11 33 of title 5, United States Code, appoint and termi-  
12 nate additional employees as are necessary to enable  
13 the Review Board and the Executive Director to per-  
14 form their duties under this Act. The Executive Di-  
15 rector and other employees of the Review Board  
16 shall be treated as employees of the executive  
17 branch.

18 (2) QUALIFICATIONS.—An individual appointed  
19 to a position as an employee of the Review Board—

20 (A) shall be a citizen of the United States  
21 of integrity and impartiality; and

22 (B) shall not have had any previous in-  
23 volvement with any official investigation or in-  
24 quiry relating to the loss, fate, or status of  
25 missing Armed Forces and civilian personnel.

1           (3) CONSULTATION WITH THE OFFICE OF GOV-  
2           ERNMENT ETHICS.—In their consideration of per-  
3           sons to be appointed as staff of the Review Board,  
4           the Review Board shall consult with the Director of  
5           the Office of Government Ethics to—

6                   (A) determine criteria for possible conflicts  
7                   of interest of staff of the Review Board, con-  
8                   sistent with ethics laws, statutes, and regula-  
9                   tions for executive branch employees; and

10                   (B) ensure that no individual selected for  
11                   such position of staff of the Review Board pos-  
12                   sesses a conflict of interest as so determined.

13           (4) SECURITY CLEARANCE.—

14                   (A) LIMIT ON APPOINTMENT.—The Review  
15                   Board shall not appoint an individual as an em-  
16                   ployee of the Review Board until after the date  
17                   on which the individual qualifies for the nec-  
18                   essary security clearance.

19                   (B) EXPEDITED PROVISION.—The appro-  
20                   priate departments, agencies, and elements of  
21                   the executive branch of the Federal Government  
22                   shall cooperate to ensure that an application by  
23                   an individual who is a candidate for a position  
24                   with the Review Board, seeking security clear-  
25                   ances necessary to carry out the duties of the

1 position, is expeditiously reviewed and granted  
2 or denied.

3 (c) COMPENSATION.—The Review Board shall fix the  
4 compensation of the Executive Director and such employ-  
5 ees without regard to chapter 51 and subchapter III of  
6 chapter 53 of title 5, United States Code, relating to clas-  
7 sification of positions and General Schedule pay rates, ex-  
8 cept that the rate of pay for the Executive Director and  
9 other employees may not exceed the rate payable for level  
10 V of the Executive Schedule under section 5316 of title  
11 5, United States Code.

12 (d) ADVISORY COMMITTEES.—

13 (1) IN GENERAL.—The Review Board may cre-  
14 ate 1 or more advisory committees to assist in ful-  
15 filling the responsibilities of the Review Board under  
16 this Act.

17 (2) APPLICABILITY OF FACCA.—Any advisory  
18 committee created by the Review Board shall be sub-  
19 ject to the Federal Advisory Committee Act (5  
20 U.S.C. App.).

21 **SEC. 9. REVIEW OF RECORDS BY THE MISSING ARMED**  
22 **FORCES AND CIVILIAN PERSONNEL RECORDS**  
23 **REVIEW BOARD.**

24 (a) STARTUP REQUIREMENTS.—The Review Board  
25 shall—

1           (1) not later than 90 days after the date on  
2           which all members are sworn in, publish an initial  
3           schedule for review of all missing Armed Forces and  
4           civilian personnel records, which the Archivist shall  
5           highlight and make available on a publicly accessible  
6           website administered by the National Archives; and

7           (2) not later than 180 days after the swearing  
8           in of the Board members, begin reviewing of missing  
9           Armed Forces and civilian personnel records, as nec-  
10          essary, under this Act.

11          (b) DETERMINATION OF THE REVIEW BOARD.—

12           (1) IN GENERAL.—The Review Board shall di-  
13           rect that all records that relate, directly or indi-  
14           rectly, to the loss, fate, or status of missing Armed  
15           Forces and civilian personnel be transmitted to the  
16           Archivist and disclosed to the public in the Collec-  
17           tion in the absence of clear and convincing evidence  
18           that the record is not a missing Armed Forces and  
19           civilian personnel record.

20           (2) POSTPONEMENT.—In approving postpone-  
21           ment of public disclosure of a missing Armed Forces  
22           and civilian personnel record, or information within  
23           a missing Armed Forces and civilian personnel  
24           record, the Review Board shall seek to—

1 (A) provide for the disclosure of segregable  
2 parts, substitutes, or summaries of the missing  
3 Armed Forces and civilian personnel record;  
4 and

5 (B) determine, in consultation with the  
6 originating body and consistent with the stand-  
7 ards for postponement under this Act, which of  
8 the following alternative forms of disclosure  
9 shall be made by the originating body:

10 (i) Any reasonably segregable par-  
11 ticular information in a missing Armed  
12 Forces and civilian personnel record.

13 (ii) A substitute record for that infor-  
14 mation which is postponed.

15 (iii) A summary of a missing Armed  
16 Forces and civilian personnel record.

17 (3) REPORTING.—With respect to a missing  
18 Armed Forces and civilian personnel record, or in-  
19 formation within a missing Armed Forces and civil-  
20 ian personnel record, the public disclosure of which  
21 is postponed under this Act, or for which only sub-  
22 stitutions or summaries have been disclosed to the  
23 public, the Review Board shall create and transmit  
24 to the Archivist, the Committee on Homeland Secu-  
25 rity and Governmental Affairs of the Senate, and

1 the Committee on Oversight and Accountability of  
2 the House of Representatives an unclassified and  
3 publicly releasable report containing—

4 (A) a description of actions by the Review  
5 Board, the originating body, or any Government  
6 office (including a justification of any such ac-  
7 tion to postpone disclosure of any record or  
8 part of any record) and of any official pro-  
9 ceedings conducted by the Review Board; and

10 (B) a statement, based on a review of the  
11 proceedings and in conformity with the deci-  
12 sions reflected therein, designating a rec-  
13 ommended specified time at which, or a speci-  
14 fied occurrence following which, the material  
15 may be appropriately disclosed to the public  
16 under this Act, which the Review Board shall  
17 disclose to the public with notice thereof, rea-  
18 sonably calculated to make interested members  
19 of the public aware of the existence of the state-  
20 ment.

21 (4) ACTIONS AFTER DETERMINATION.—

22 (A) IN GENERAL.—Not later than 30 days  
23 after the date of a determination by the Review  
24 Board that a missing Armed Forces and civilian  
25 personnel record shall be publicly disclosed in

1 the Collection or postponed for disclosure and  
2 held in the protected Collection, the Review  
3 Board shall notify the head of the originating  
4 body of the determination and highlight and  
5 make available the determination on a publicly  
6 accessible website reasonably calculated to make  
7 interested members of the public aware of the  
8 existence of the determination.

9 (B) OVERSIGHT NOTICE.—Simultaneous  
10 with notice under subparagraph (A), the Review  
11 Board shall provide notice of a determination  
12 concerning the public disclosure or postpone-  
13 ment of disclosure of a missing Armed Forces  
14 and civilian personnel record, or information  
15 contained within a missing Armed Forces and  
16 civilian personnel record, which shall include a  
17 written unclassified justification for public dis-  
18 closure or postponement of disclosure, including  
19 an explanation of the application of any stand-  
20 ards in section 6 to the President, to the Com-  
21 mittee on Homeland Security and Govern-  
22 mental Affairs of the Senate, and the Com-  
23 mittee on Oversight and Reform of the House  
24 of Representatives.

1           (5) REFERRAL AFTER TERMINATION.—A miss-  
2           ing Armed Forces and civilian personnel record that  
3           is identified, located, or otherwise discovered after  
4           the date on which the Review Board terminates shall  
5           be transmitted to the Archivist for the Collection  
6           and referred to the Committee on Armed Services of  
7           the Senate and the Committee on Armed Services of  
8           the House of Representatives for review, ongoing  
9           oversight and, as warranted, referral for possible en-  
10          forcement action relating to a violation of this Act  
11          and determination as to whether declassification of  
12          the missing Armed Forces and civilian personnel is  
13          warranted under this Act.

14          (c) NOTICE TO PUBLIC.—Every 30 days, beginning  
15          on the date that is 60 days after the date on which the  
16          Review Board first approves the postponement of disclo-  
17          sure of a missing Armed Forces and civilian personnel  
18          record, the Review Board shall highlight and make acces-  
19          sible on a publicly available website reasonably calculated  
20          to make interested members of the public aware of the  
21          existence of the postponement a notice that summarizes  
22          the postponements approved by the Review Board, includ-  
23          ing a description of the subject, originating body, length  
24          or other physical description, and each ground for post-  
25          ponement that is relied upon.

1 (d) REPORTS BY THE REVIEW BOARD.—

2 (1) IN GENERAL.—Not later than 1 year after  
3 the date of enactment of this Act, and every year  
4 thereafter until the Review Board terminates, the  
5 Review Board shall submit a report regarding the  
6 activities of the Review Board to—

7 (A) the Committee on Oversight and Re-  
8 form of the House of Representatives;

9 (B) the Committee on Homeland Security  
10 and Governmental Affairs of the Senate;

11 (C) the President;

12 (D) the Archivist; and

13 (E) the head of any Government office the  
14 records of which have been the subject of Re-  
15 view Board activity.

16 (2) CONTENTS.—Each report under paragraph  
17 (1) shall include the following information:

18 (A) A financial report of the expenses for  
19 all official activities and requirements of the  
20 Review Board and its employees.

21 (B) The progress made on review, trans-  
22 mission to the Archivist, and public disclosure  
23 of missing Armed Forces and civilian personnel  
24 records.

1           (C) The estimated time and volume of  
2 missing Armed Forces and civilian personnel  
3 records involved in the completion of the duties  
4 of the Review Board under this Act.

5           (D) Any special problems, including re-  
6 quests and the level of cooperation of Govern-  
7 ment offices, with regard to the ability of the  
8 Review Board to carry out its duties under this  
9 Act.

10          (E) A record of review activities, including  
11 a record of postponement decisions by the Re-  
12 view Board or other related actions authorized  
13 under this Act, and a record of the volume of  
14 records reviewed and postponed.

15          (F) Suggestions and requests to Congress  
16 for additional legislative authority needs.

17          (G) An appendix containing copies of re-  
18 ports relating to postponed records submitted to  
19 the Archivist under subsection (b)(3) since the  
20 end of the period covered by the most recent re-  
21 port under paragraph (1).

22          (3) COPIES AND BRIEFS.—Coincident with the  
23 reporting requirements in paragraph (2), or more  
24 frequently as warranted by new information, the Re-  
25 view Board shall provide copies to, and fully brief,

1 at a minimum, the President, the Archivist, leader-  
2 ship of Congress, the Chairman and Ranking Mem-  
3 bers of the Committee on Homeland Security and  
4 Governmental Affairs of the Senate and the Com-  
5 mittee on Oversight and Accountability of the House  
6 of Representatives, and the Chairs and Chairmen, as  
7 the case may be, and Ranking Members and Vice  
8 Chairmen, as the case may be, of such other com-  
9 mittees as leadership of Congress determines appro-  
10 priate on the Controlled Disclosure Campaign Plan,  
11 classified appendix, and postponed disclosures, spe-  
12 cifically addressing—

13 (A) recommendations for periodic review,  
14 downgrading, and declassification, as well as  
15 the exact time or specified occurrence following  
16 which specific missing Armed Forces and civil-  
17 ian material may be appropriately disclosed;

18 (B) the rationale behind each postpone-  
19 ment determination and the recommended  
20 means to achieve disclosure of each postponed  
21 item;

22 (C) any other findings that the Review  
23 Board chooses to offer; and

24 (D) an addendum containing copies of re-  
25 ports of postponed records to the Archivist re-

1           quired under subsection (b)(3) made since the  
2           date of the preceding report under this sub-  
3           section.

4           (4) TERMINATION NOTICE.—Not later than 90  
5           days before the Review Board expects to complete  
6           the work of the Review Board under this Act, the  
7           Review Board shall provide written notice to Con-  
8           gress of the intent of the Review Board to terminate  
9           operations at a specified date.

10 **SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDI-**  
11 **TIONAL STUDY.**

12           (a) MATERIALS UNDER SEAL OF COURT.—

13           (1) IN GENERAL.—The Review Board may re-  
14           quest the Attorney General to petition any court of  
15           the United States or of a foreign country to release  
16           any information relevant to the loss, fate, or status  
17           of missing Armed Forces and civilian personnel that  
18           is held under seal of the court.

19           (2) GRAND JURY INFORMATION.—

20           (A) IN GENERAL.—The Review Board may  
21           request the Attorney General to petition any  
22           court of the United States to release any infor-  
23           mation relevant to loss, fate, or status of miss-  
24           ing Armed Forces and civilian personnel that is

1 held under the injunction of secrecy of a grand  
2 jury.

3 (B) TREATMENT.—A request for disclo-  
4 sure of missing Armed Forces and civilian per-  
5 sonnel materials under this Act shall be deemed  
6 to constitute a showing of particularized need  
7 under rule 6 of the Federal Rules of Criminal  
8 Procedure.

9 (b) SENSE OF CONGRESS.—It is the sense of Con-  
10 gress that—

11 (1) the Attorney General should assist the Re-  
12 view Board in good faith to unseal any records that  
13 the Review Board determines to be relevant and held  
14 under seal by a court or under the injunction of se-  
15 crecy of a grand jury;

16 (2) the Secretary of State should—

17 (A) contact the Governments of the Rus-  
18 sian Federation, the People's Republic of  
19 China, and the Democratic People's Republic of  
20 Korea to seek the disclosure of all records in  
21 their respective custody, possession, or control  
22 relevant to the loss, fate, or status of missing  
23 Armed Forces and civilian personnel; and

24 (B) contact any other foreign government  
25 that may hold information relevant to the loss,

1           fate, or status of missing Armed Forces and ci-  
2           vilian personnel, and seek disclosure of such in-  
3           formation; and

4           (3) all agencies should cooperate in full with the  
5           Review Board to seek the disclosure of all informa-  
6           tion relevant to the loss, fate, or status of missing  
7           Armed Forces and civilian personnel consistent with  
8           the public interest.

9   **SEC. 11. RULES OF CONSTRUCTION.**

10          (a) **PRECEDENCE OVER OTHER LAW.**—When this  
11   Act requires transmission of a record to the Archivist or  
12   public disclosure, it shall take precedence over any other  
13   law (except section 6103 of the Internal Revenue Code of  
14   1986), judicial decision construing such law, or common  
15   law doctrine that would otherwise prohibit such trans-  
16   mission or disclosure, with the exception of deeds gov-  
17   erning access to or transfer or release of gifts and dona-  
18   tions of records to the United States Government.

19          (b) **FREEDOM OF INFORMATION ACT.**—Nothing in  
20   this Act shall be construed to eliminate or limit any right  
21   to file requests with any Executive agency or seek judicial  
22   review of the decisions under section 552 of title 5, United  
23   States Code.

24          (c) **JUDICIAL REVIEW.**—Nothing in this Act shall be  
25   construed to preclude judicial review under chapter 7 of

1 title 5, United States Code, of final actions taken or re-  
2 quired to be taken under this Act.

3 (d) EXISTING AUTHORITY.—Nothing in this Act re-  
4 vokes or limits the existing authority of the President, any  
5 Executive agency, the Senate, or the House of Representa-  
6 tives, or any other entity of the Government to publicly  
7 disclose records in its custody, possession, or control.

8 (e) RULES OF THE SENATE AND HOUSE OF REP-  
9 RESENTATIVES.—To the extent that any provision of this  
10 Act establishes a procedure to be followed in the Senate  
11 or the House of Representatives, such provision is adopt-  
12 ed—

13 (1) as an exercise of the rulemaking power of  
14 the Senate and House of Representatives, respec-  
15 tively, and is deemed to be part of the rules of each  
16 House, respectively, but applicable only with respect  
17 to the procedure to be followed in that House, and  
18 it supersedes other rules only to the extent that it  
19 is inconsistent with such rules; and

20 (2) with full recognition of the constitutional  
21 right of either House to change the rules (so far as  
22 they relate to the procedure of that House) at any  
23 time, in the same manner, and to the same extent  
24 as in the case of any other rule of that House.

1 **SEC. 12. REQUESTS FOR EXTENSIONS.**

2       The head of a Government office required to comply  
3 with a deadline under this Act that is based off the date  
4 of establishment of a quorum of the members of the Miss-  
5 ing Armed Forces and Civilian Personnel Records Review  
6 Board under section 7 may request an extension from the  
7 Board for good cause. If the Board agrees to the request,  
8 the deadline applicable to the Government office for the  
9 purpose of such requirement shall be such later date as  
10 the Board may determine appropriate.

11 **SEC. 13. TERMINATION OF EFFECT OF ACT.**

12       (a) PROVISIONS PERTAINING TO THE REVIEW  
13 BOARD.—The provisions of this Act that pertain to the  
14 appointment and operation of the Review Board shall  
15 cease to be effective when the Review Board and the terms  
16 of its members have terminated under section 7(o).

17       (b) OTHER PROVISIONS.—The remaining provisions  
18 of this Act shall continue in effect until such time as the  
19 Archivist certifies to the President and Congress that all  
20 missing Armed Forces and civilian personnel records have  
21 been made available to the public in accordance with this  
22 Act.

23 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

24       There are authorized to be appropriated such sums  
25 as are necessary to carry out this Act, to remain available  
26 until expended.

1 **SEC. 15. SEVERABILITY.**

2       If any provision of this Act, or the application thereof  
3 to any person or circumstance, is held invalid, the remain-  
4 der of this Act and the application of that provision to  
5 other persons not similarly situated or to other cir-  
6 cumstances shall not be affected by the invalidation.