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[Report No. 108–724, Parts I, II, III, IV, and V]

To provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2004

Mr. HASTERT (for himself, Mr. DELAY, Mr. BLUNT, Ms. PRYCE of Ohio, Mr. HOEKSTRA, Mr. HUNTER, Mr. YOUNG of Florida, Mr. SENSENBRENNER, Mr. HYDE, Mr. TOM DAVIS of Virginia, Mr. OXLEY, Mr. DREIER, Mr. COX, Mr. THOMAS, Mr. NUSSLE, Mr. BOEHNER, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committees on Armed Services, Education and the Workforce, Energy and Commerce, Financial Services, Government Reform, International Relations, the Judiciary, Rules, Science, Transportation and Infrastructure, Ways and Means, and Select Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 4, 2004

Reported from the Permanent Select Committee on Intelligence with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface roman]

OCTOBER 4, 2004

Reported from the Committee on Armed Services with amendments

[Omit the part struck through in brackets and insert the part printed in italic]

OCTOBER 4, 2004

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface italic]

OCTOBER 4, 2004

Referral to the Committees on Education and the Workforce, Energy and Commerce, Government Reform, International Relations, the Judiciary, Rules, Science, Transportation and Infrastructure, Ways and Means, and the Select Committee on Homeland Security extended for a period ending not later than October 5, 2004

OCTOBER 5, 2004

Reported from the Committee on Government Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in italic in bold parentheses]

OCTOBER 5, 2004

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface roman in bold brackets]

OCTOBER 5, 2004

Additional sponsors: Mr. BURR, Mr. GREEN of Wisconsin, Mr. MCINNIS, Mr. GOODLATTE, Mr. ISSA, Mr. PICKERING, Mr. SESSIONS, Mr. GINGREY, Mrs. MILLER of Michigan, and Mr. RAMSTAD

OCTOBER 5, 2004

Committees on Education and the Workforce, Energy and Commerce, International Relations, Rules, Science, Transportation and Infrastructure, Ways and Means, and the Select Committee on Homeland Security discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

To provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes.

1 ***SECTION 1. SHORT TITLE.***

2 ***This Act may be cited as the "9/11 Rec-***
3 ***ommendations Implementation Act".***

4 ***SEC. 2. TABLE OF CONTENTS.***

5 ***The table of contents for this Act is as fol-***
6 ***lows:***

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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:

1 *"NATIONAL INTELLIGENCE DIRECTOR*

2 *"SEC. 102. (a) NATIONAL INTELLIGENCE DI-*
3 *RECTOR.—(1) There is a National Intelligence*
4 *Director who shall be appointed by the Presi-*
5 *dent, by and with the advice and consent of the*
6 *Senate.*

7 *"(2) The National Intelligence Director*
8 *shall not be located within the Executive Of-*
9 *fice of the President.*

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

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

16 *"(2) act as the principal adviser to the*
17 *President, to the National Security Coun-*
18 *cil, and the Homeland Security Council*
19 *for intelligence matters related to the na-*
20 *tional security; and*

21 *"(3) through the heads of the depart-*
22 *ments containing elements of the intel-*
23 *ligence community, and the Central Intel-*
24 *ligence Agency, manage and oversee the*
25 *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

1 *"(E) to such other persons as the Na-*
2 *tional Intelligence Director determines to*
3 *be appropriate.*
4 *"(2) Such national intelligence should be*
5 *timely, objective, independent of political con-*
6 *siderations, and based upon all sources avail-*
7 *able to the intelligence community and other*
8 *appropriate entities.*
9 *"(b) ACCESS TO INTELLIGENCE.—To the ex-*
10 *tent approved by the President, the National*
11 *Intelligence Director shall have access to all*
12 *national intelligence and intelligence related*
13 *to the national security which is collected by*
14 *any Federal department, agency, or other enti-*
15 *ty, except as otherwise provided by law or, as*
16 *appropriate, under guidelines agreed upon by*
17 *the Attorney General and the National Intel-*
18 *ligence Director.*
19 *"(c) BUDGET AUTHORITIES.—(1)(A) The Na-*
20 *tional Intelligence Director shall develop and*
21 *present to the President on an annual basis a*
22 *budget for intelligence and intelligence-re-*
23 *lated activities of the United States.*
24 *"(B) In carrying out subparagraph (A) for*
25 *any fiscal year for the components of the budg-*

et 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 an-

1 ***nual budget for intelligence and intelligence-***
2 ***related activities.***
3 ***"(5)(A) The National Intelligence Director***
4 ***shall facilitate the management and execution***
5 ***of funds appropriated for the National Intel-***
6 ***ligence Program.***
7 ***"(B) Notwithstanding any other provision***
8 ***of law, in receiving funds pursuant to relevant***
9 ***appropriations Acts for the National Intel-***
10 ***ligence Program, the Office of Management***
11 ***and Budget shall apportion funds appro-***
12 ***priated for the National Intelligence Program***
13 ***to the National Intelligence Director for allo-***
14 ***cation to the elements of the intelligence com-***
15 ***munity through the host executive depart-***
16 ***ments that manage programs and activities***
17 ***that are part of the National Intelligence Pro-***
18 ***gram.***
19 ***"(C) The National Intelligence Director***
20 ***shall monitor the implementation and execu-***
21 ***tion of the National Intelligence Program by***
22 ***the heads of the elements of the intelligence***
23 ***community that manage programs and activi-***
24 ***ties that are part of the National Intelligence***

1 ***Program, which may include audits and eval-***
2 ***uations, as necessary and feasible.***
3 ***"(6) Apportionment and allotment of funds***
4 ***under this subsection shall be subject to chap-***
5 ***ter 13 and section 1517 of title 31, United***
6 ***States Code, and the Congressional Budget***
7 ***and Impoundment Control Act of 1974 (2***
8 ***U.S.C. 621 et seq.).***
9 ***"(7)(A) The National Intelligence Director***
10 ***shall provide a quarterly report, beginning***
11 ***April 1, 2005, and ending April 1, 2007, to the***
12 ***President and the Congress regarding imple-***
13 ***mentation of this section.***
14 ***"(B) The National Intelligence Director***
15 ***shall report to the President and the Congress***
16 ***not later than 5 days after learning of any in-***
17 ***stance in which a departmental comptroller***
18 ***acts in a manner inconsistent with the law (in-***
19 ***cluding permanent statutes, authorization***
20 ***Acts, and appropriations Acts), or the direc-***
21 ***tion of the National Intelligence Director, in***
22 ***carrying out the National Intelligence Pro-***
23 ***gram.***
24 ***"(d) ROLE OF NATIONAL INTELLIGENCE DI-***
25 ***RECTOR 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

1 ***recruitment and training of women, mi-***
2 ***norities, and individuals with diverse,***
3 ***ethnic, and linguistic backgrounds.***
4 ***"(B) In developing the policies prescribed***
5 ***under subparagraph (A), the National Intel-***
6 ***ligence Director shall consult with the heads***
7 ***of the departments containing the elements of***
8 ***the intelligence community.***
9 ***"(C) Policies prescribed under subpara-***
10 ***graph (A) shall not be inconsistent with the***
11 ***personnel policies otherwise applicable to***
12 ***members of the uniformed services.***
13 ***"(4) The National Intelligence Director***
14 ***shall ensure compliance with the Constitution***
15 ***and laws of the United States by the Central***
16 ***Intelligence Agency and shall ensure such***
17 ***compliance by other elements of the intel-***
18 ***ligence community through the host executive***
19 ***departments that manage the programs and***
20 ***activities that are part of the National Intel-***
21 ***ligence Program.***
22 ***"(5) The National Intelligence Director***
23 ***shall ensure the elimination of waste and un-***
24 ***necessary duplication within the intelligence***
25 ***community.***

1 *"(6) The National Intelligence Director*
2 *shall perform such other functions as the*
3 *President may direct.*
4 *Nothing in this Act shall be construed as af-*
5 *fecting the role of the Department of Justice or*
6 *the Attorney General with respect to applica-*
7 *tions under the Foreign Intelligence Surveil-*
8 *lance Act of 1978.*
9 *"(g) INTELLIGENCE INFORMATION SHARING.—*
10 *(1) The National Intelligence Director shall*
11 *have principal authority to ensure maximum*
12 *availability of and access to intelligence infor-*
13 *mation within the intelligence community con-*
14 *sistent with national security requirements.*
15 *The National Intelligence Director shall—*
16 *"(A) establish uniform security stand-*
17 *ards and procedures;*
18 *"(B) establish common information*
19 *technology standards, protocols, and*
20 *interfaces;*
21 *"(C) ensure development of informa-*
22 *tion technology systems that include*
23 *multi-level security and intelligence inte-*
24 *gration 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 facili-

tate 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.

1 *"(j) UNIFORM PROCEDURES FOR SENSITIVE*
2 *COMPARTMENTED INFORMATION.—The Presi-*
3 *dent, acting through the National Intelligence*
4 *Director, shall—*
5 *"(1) establish uniform standards and*
6 *procedures for the grant of access to sen-*
7 *sitive compartmented information to any*
8 *officer or employee of any agency or de-*
9 *partment of the United States and to em-*
10 *ployees of contractors of those agencies or*
11 *departments;*
12 *"(2) ensure the consistent implementa-*
13 *tion of those standards and procedures*
14 *throughout such agencies and depart-*
15 *ments;*
16 *"(3) ensure that security clearances*
17 *granted by individual elements of the in-*
18 *telligence community are recognized by*
19 *all elements of the intelligence commu-*
20 *nity, and under contracts entered into by*
21 *those agencies; and*
22 *"(4) ensure that the process for inves-*
23 *tigation and adjudication of an applica-*
24 *tion for access to sensitive compartmented*
25 *information is performed in the most ex-*

peditious 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 Intel-

ligence 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 Intel-

ligence 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.

1 *"(b) OFFICE OF NATIONAL INTELLIGENCE DI-*
2 *RECTOR.—(1) The Office of the National Intel-*
3 *ligence Director is composed of the following:*
4 *"(A) The National Intelligence Direc-*
5 *tor.*
6 *"(B) The Deputy National Intelligence*
7 *Director.*
8 *"(C) The Deputy National Intelligence*
9 *Director for Operations.*
10 *"(D) The Deputy National Intelligence*
11 *Director for Community Management and*
12 *Resources.*
13 *"(E) The Associate National Intel-*
14 *ligence Director for Military Support.*
15 *"(F) The Associate National Intel-*
16 *ligence Director for Domestic Security.*
17 *"(G) The Associate National Intel-*
18 *ligence Director for Diplomatic Affairs.*
19 *"(H) The National Intelligence Coun-*
20 *cil.*
21 *"(I) The General Counsel to the Na-*
22 *tional Intelligence Director.*
23 *"(J) Such other offices and officials as*
24 *may be established by law or the National*

1 *Intelligence Director may establish or des-*
2 *ignate in the Office.*
3 *"(2) To assist the National Intelligence Di-*
4 *rector in fulfilling the duties and responsibil-*
5 *ities of the Director, the Director shall employ*
6 *and utilize in the Office of the National Intel-*
7 *ligence Director a staff having expertise in*
8 *matters relating to such duties and respon-*
9 *sibilities and may establish permanent posi-*
10 *tions and appropriate rates of pay with re-*
11 *spect to such staff.*
12 *"(c) DEPUTY NATIONAL INTELLIGENCE DIREC-*
13 *TOR.—(1) There is a Deputy National Intel-*
14 *ligence Director who shall be appointed by the*
15 *President, by and with the advice and consent*
16 *of the Senate.*
17 *"(2) The Deputy National Intelligence Di-*
18 *rector shall assist the National Intelligence*
19 *Director in carrying out the responsibilities of*
20 *the National Intelligence Director under this*
21 *Act.*
22 *"(3) The Deputy National Intelligence Di-*
23 *rector shall act for, and exercise the powers of,*
24 *the National Intelligence Director during the*
25 *absence or disability of the National Intel-*

ligence 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 In-

telligence 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

1 *"(B) perform such other duties and ex-*
2 *ercise such powers as the National Intel-*
3 *ligence Director may prescribe.*
4 *"(g) ASSOCIATE NATIONAL INTELLIGENCE DI-*
5 *RECTOR FOR DOMESTIC SECURITY.—(1) There is*
6 *an Associate National Intelligence Director*
7 *for Domestic Security who shall be appointed*
8 *by the National Intelligence Director in con-*
9 *sultation with the Attorney General and the*
10 *Secretary of Homeland Security.*
11 *"(2) The Associate National Intelligence*
12 *Director for Domestic Security shall—*
13 *"(A) ensure that the intelligence needs*
14 *of the Department of Justice, the Depart-*
15 *ment of Homeland Security, and other rel-*
16 *evant executive departments and agencies*
17 *are met; and*
18 *"(B) perform such other duties and ex-*
19 *ercise such powers as the National Intel-*
20 *ligence Director may prescribe, except*
21 *that the National Intelligence Director*
22 *may not make such officer responsible for*
23 *disseminating any domestic or homeland*
24 *security information to State government*

1 *or local government officials or any pri-*
2 *vate sector entity.*
3 *"(h) ASSOCIATE NATIONAL INTELLIGENCE DI-*
4 *RECTOR FOR DIPLOMATIC AFFAIRS.—(1) There is*
5 *an Associate National Intelligence Director*
6 *for Diplomatic Affairs who shall be appointed*
7 *by the National Intelligence Director in con-*
8 *sultation with the Secretary of State.*
9 *"(2) The Associate National Intelligence*
10 *Director for Diplomatic Affairs shall—*
11 *"(A) ensure that the intelligence needs*
12 *of the Department of State are met; and*
13 *"(B) perform such other duties and ex-*
14 *ercise such powers as the National Intel-*
15 *ligence Director may prescribe.*
16 *"(i) MILITARY STATUS OF DIRECTOR AND*
17 *DEPUTY DIRECTORS.—(1) Not more than one of*
18 *the individuals serving in the positions speci-*
19 *fied in paragraph (2) may be a commissioned*
20 *officer of the Armed Forces in active status.*
21 *"(2) The positions referred to in this para-*
22 *graph are the following:*
23 *"(A) The National Intelligence Direc-*
24 *tor.*

"(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.

1 *"(j) NATIONAL INTELLIGENCE COUNCIL.—(1)*
2 *Within the Office of the Deputy National Intel-*
3 *ligence Director for Operations, there is a Na-*
4 *tional Intelligence Council.*
5 *"(2)(A) The National Intelligence Council*
6 *shall be composed of senior analysts within*
7 *the intelligence community and substantive*
8 *experts from the public and private sector,*
9 *who shall be appointed by and report to the*
10 *Deputy National Intelligence Director for Op-*
11 *erations.*
12 *"(B) The Director shall prescribe appro-*
13 *priate security requirements for personnel ap-*
14 *pointed from the private sector as a condition*
15 *of service on the Council, or as contractors of*
16 *the Council or employees of such contractors,*
17 *to ensure the protection of intelligence sources*
18 *and methods while avoiding, wherever pos-*
19 *sible, unduly intrusive requirements which the*
20 *Director considers to be unnecessary for this*
21 *purpose.*
22 *"(3) The National Intelligence Council*
23 *shall—*
24 *"(A) produce national intelligence es-*
25 *timates 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

1 ***may carry out its responsibilities under this***
2 ***section by contract, including contracts for***
3 ***substantive experts necessary to assist the***
4 ***Council with particular assessments under***
5 ***this subsection.***

6 ***"(6) The Deputy National Intelligence Di-***
7 ***rector for Operations shall make available to***
8 ***the National Intelligence Council such per-***
9 ***sonnel as may be necessary to permit the Coun-***
10 ***cil to carry out its responsibilities under this***
11 ***section.***

12 ***"(7) The heads of the elements of the intel-***
13 ***ligence community shall, as appropriate, fur-***
14 ***nish such support to the National Intelligence***
15 ***Council, including the preparation of intel-***
16 ***ligence analyses, as may be required by the Na-***
17 ***tional Intelligence Director.***

18 ***"(k) GENERAL COUNSEL TO THE NATIONAL***
19 ***INTELLIGENCE DIRECTOR.—(1) There is a Gen-***
20 ***eral Counsel to the National Intelligence Di-***
21 ***rector.***

22 ***"(2) The individual serving in the position***
23 ***of General Counsel to the National Intel-***
24 ***ligence Director may not, while so serving, also***

1 ***serve as the General Counsel of any other***
2 ***agency or department of the United States.***
3 ***"(3) The General Counsel to the National***
4 ***Intelligence Director is the chief legal officer***
5 ***for the National Intelligence Director.***
6 ***"(4) The General Counsel to the National***
7 ***Intelligence Director shall perform such func-***
8 ***tions as the National Intelligence Director***
9 ***may prescribe.***
10 ***"(l) INTELLIGENCE COMMUNITY INFORMATION***
11 ***TECHNOLOGY OFFICER.—(1) There is an Intel-***
12 ***ligence Community Information Technology***
13 ***Officer who shall be appointed by the National***
14 ***Intelligence Director.***
15 ***"(2) The mission of the Intelligence Com-***
16 ***munity Information Technology Officer is to***
17 ***assist the National Intelligence Director in en-***
18 ***suring the sharing of information in the full-***
19 ***est and most prompt manner between and***
20 ***among elements of the intelligence community***
21 ***consistent with section 102A(g).***
22 ***"(3) The Intelligence Community Informa-***
23 ***tion Technology Officer shall—***
24 ***"(A) assist the Deputy National Intel-***
25 ***ligence Director for Community Manage-***

ment 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 in-

formation 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).

1 *"DIRECTOR OF THE CENTRAL INTELLIGENCE*
2 *AGENCY*

3 *"SEC. 104A. (a) DIRECTOR OF CENTRAL IN-*
4 *TELLIGENCE AGENCY.—There is a Director of the*
5 *Central Intelligence Agency who shall be ap-*
6 *pointed by the President, by and with the ad-*
7 *vice and consent of the Senate. The Director*
8 *shall be under the authority, direction, and*
9 *control of the National Intelligence Director,*
10 *except as otherwise determined by the Presi-*
11 *dent.*

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

15 *"(1) carry out the responsibilities spec-*
16 *ified in subsection (c); and*

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

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

21 *"(1) collect intelligence through*
22 *human sources and by other appropriate*
23 *means, except that the Director of the*
24 *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 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

1 *national security as the President or the*
2 *National Intelligence Director may direct.*
3 *"(d) DEPUTY DIRECTOR OF THE CENTRAL IN-*
4 *TELLIGENCE AGENCY.—There is a Deputy Direc-*
5 *tor of the Central Intelligence Agency who*
6 *shall be appointed by the President. The Dep-*
7 *uty Director shall perform such functions as*
8 *the Director may prescribe and shall perform*
9 *the duties of the Director during the Director's*
10 *absence or disability or during a vacancy in*
11 *the position of the Director of the Central In-*
12 *telligence Agency.*
13 *"(e) TERMINATION OF EMPLOYMENT OF CIA*
14 *EMPLOYEES.—(1) Notwithstanding the provi-*
15 *sions of any other law, the Director of the Cen-*
16 *tral Intelligence Agency may, in the discretion*
17 *of the Director, terminate the employment of*
18 *any officer or employee of the Central Intel-*
19 *ligence Agency whenever the Director con-*
20 *siders the termination of employment of such*
21 *officer or employee necessary or advisable in*
22 *the interests of the United States.*
23 *"(2) Any termination of employment of an*
24 *officer or employee under paragraph (1) shall*
25 *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 Intel-

ligence 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.

"(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;

1 *"(4) disseminate terrorism informa-*
2 *tion, including current terrorism threat*
3 *analysis, to the President, the Vice Presi-*
4 *dent, the Secretaries of State, Defense,*
5 *and Homeland Security, the Attorney Gen-*
6 *eral, the Director of the Central Intel-*
7 *ligence Agency, and other officials of the*
8 *executive branch as appropriate, and to*
9 *the appropriate committees of Congress;*
10 *"(5) support the Department of Justice*
11 *and the Department of Homeland Secu-*
12 *rity, and other appropriate agencies, in*
13 *fulfillment of their responsibilities to dis-*
14 *seminate terrorism information, con-*
15 *sistent with applicable law, Executive Or-*
16 *ders and other Presidential guidance, to*
17 *State and local government officials, and*
18 *other entities, and coordinate dissemina-*
19 *tion of terrorism information to foreign*
20 *governments as approved by the National*
21 *Intelligence Director;*
22 *"(6) consistent with priorities ap-*
23 *proved by the President, assist the Na-*
24 *tional Intelligence Director in estab-*
25 *lishing requirements for the intelligence*

1 *community for the collection of terrorism*
2 *information; and*
3 *"(7) perform such other duties as the*
4 *National Intelligence Director may pre-*
5 *scribe or are prescribed by law.*
6 *"(g) LIMITATION.—The Director of the Na-*
7 *tional counterterrorism Center may not direct*
8 *the execution of counterterrorism operations.*
9 *"(h) RESOLUTION OF DISPUTES.—The Na-*
10 *tional Intelligence Director shall resolve dis-*
11 *agreements between the National counter-*
12 *terrorism Center and the head of a depart-*
13 *ment, agency, or element of the United States*
14 *Government on designations, assignments,*
15 *plans, or responsibilities. The head of such a*
16 *department, agency, or element may appeal*
17 *the resolution of the disagreement by the Na-*
18 *tional Intelligence Director to the President.*
19 *"(i) DIRECTORATE OF INTELLIGENCE.—The*
20 *Director of the National counterterrorism Cen-*
21 *ter shall establish and maintain within the*
22 *National counterterrorism Center a Direc-*
23 *torate of Intelligence which shall have pri-*
24 *mary responsibility within the United States*
25 *Government for analysis of terrorism and ter-*

rorist 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.

1 ***(b) DUTIES.—The Civil Liberties Protection***
2 ***Officer shall—***
3 ***(1) ensure that the protection of civil***
4 ***liberties and privacy is appropriately in-***
5 ***corporated in the policies and procedures***
6 ***developed for and implemented by the Of-***
7 ***fice of the National Intelligence Director***
8 ***and the elements of the intelligence com-***
9 ***munity within the National Intelligence***
10 ***Program;***
11 ***(2) oversee compliance by the Office***
12 ***and the National Intelligence Director***
13 ***with requirements under the Constitution***
14 ***and all laws, regulations, Executive or-***
15 ***ders, and implementing guidelines relat-***
16 ***ing to civil liberties and privacy;***
17 ***(3) review and assess complaints and***
18 ***other information indicating possible***
19 ***abuses of civil liberties and privacy in the***
20 ***administration of the programs and oper-***
21 ***ations of the Office and the National In-***
22 ***telligence Director and, as appropriate,***
23 ***investigate any such complaint or infor-***
24 ***mation;***

(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 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.—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 there-

of, 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 train-

ing, 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 institu-

1 ***tions that receive grants under the National***
2 ***Flagship Language Initiative may support stu-***
3 ***dents who pursue total immersion foreign lan-***
4 ***guage studies overseas of foreign languages***
5 ***that are critical to the national security of the***
6 ***United States.***

7 ***SEC. 1053. ESTABLISHMENT OF SCHOLARSHIP PROGRAM***
8 ***FOR ENGLISH LANGUAGE STUDIES FOR HER-***
9 ***ITAGE COMMUNITY CITIZENS OF THE UNITED***
10 ***STATES WITHIN THE NATIONAL SECURITY***
11 ***EDUCATION PROGRAM.***

12 ***(a) SCHOLARSHIP PROGRAM FOR ENGLISH***
13 ***LANGUAGE STUDIES FOR HERITAGE COMMUNITY***
14 ***CITIZENS OF THE UNITED STATES.—(1) Sub-***
15 ***section (a)(1) of section 802 of the David L.***
16 ***Boren National Security Education Act of 1991***
17 ***(50 U.S.C. 1902) is amended—***

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

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

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

1 *"(E) awarding scholarships to stu-*
2 *dents who—*
3 *"(i) are United States citizens*
4 *who—*
5 *"(I) are native speakers*
6 *(commonly referred to as her-*
7 *itage community residents) of*
8 *a foreign language that is*
9 *identified as critical to the na-*
10 *tional security interests of the*
11 *United States who should be*
12 *actively recruited for employ-*
13 *ment by Federal security agen-*
14 *cies with a need for linguists;*
15 *and*
16 *"(II) are not proficient at*
17 *a professional level in the*
18 *English language with respect*
19 *to reading, writing, and inter-*
20 *personal skills required to*
21 *carry out the national security*
22 *interests of the United States,*
23 *as determined by the Sec-*
24 *retary,*

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 Of-

fice 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.

1 ***(b) REPORTS.—Not later than one year***
2 ***after the date of the enactment of this Act, the***
3 ***National Intelligence Director shall submit to***
4 ***Congress the following reports:***
5 ***(1) A report that identifies—***
6 ***(A) skills and processes involved***
7 ***in learning a foreign language; and***
8 ***(B) characteristics and teaching***
9 ***techniques that are most effective in***
10 ***teaching foreign languages.***
11 ***(2)(A) A report that identifies foreign***
12 ***language heritage communities, particu-***
13 ***larly such communities that include***
14 ***speakers of languages that are critical to***
15 ***the national security of the United States.***
16 ***(B) For purposes of subparagraph (A),***
17 ***the term "foreign language heritage com-***
18 ***munity" means a community of residents***
19 ***or citizens of the United States—***
20 ***(i) who are native speakers of, or***
21 ***who have fluency in, a foreign lan-***
22 ***guage; and***
23 ***(ii) who should be actively re-***
24 ***cruited for employment by Federal se-***

curity 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 edu-

cational 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

1 ***1016(3)) voluntary services in support of the***
2 ***activities authorized by this subtitle.***
3 ***"(b) REQUIREMENTS AND LIMITATIONS.—(1)***
4 ***In accepting voluntary services from an indi-***
5 ***vidual under subsection (a), the head of the***
6 ***element shall—***
7 ***"(A) supervise the individual to the***
8 ***same extent as the head of the element***
9 ***would supervise a compensated employee***
10 ***of that element providing similar services;***
11 ***and***
12 ***"(B) ensure that the individual is li-***
13 ***censed, privileged, has appropriate edu-***
14 ***cational or experiential credentials, or is***
15 ***otherwise qualified under applicable law***
16 ***or regulations to provide such services.***
17 ***"(2) In accepting voluntary services from***
18 ***an individual under subsection (a), the head***
19 ***of an element of the intelligence community***
20 ***entity may not—***
21 ***"(A) place the individual in a policy-***
22 ***making position, or other position per-***
23 ***forming inherently government functions;***
24 ***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

1 ***services so accepted, the individual is deemed***
2 ***to be a volunteer of a governmental entity or***
3 ***nonprofit institution for purposes of the Vol-***
4 ***unteer Protection Act of 1997 (42 U.S.C. 14501***
5 ***et seq.).***
6 ***"(B) In the case of any claim against such***
7 ***an individual with respect to the provision of***
8 ***such services, section 4(d) of such Act (42***
9 ***U.S.C. 14503(d)) shall not apply.***
10 ***"(3) Acceptance of voluntary services***
11 ***under this section shall have no bearing on the***
12 ***issuance or renewal of a security clearance.***
13 ***"(e) REIMBURSEMENT OF INCIDENTAL EX-***
14 ***PENSES.—(1) The head of an element of the in-***
15 ***telligence community entity may reimburse an***
16 ***individual for incidental expenses incurred by***
17 ***the individual in providing voluntary services***
18 ***accepted under subsection (a). The head of an***
19 ***element of the intelligence community entity***
20 ***shall determine which expenses are eligible for***
21 ***reimbursement under this subsection.***
22 ***"(2) Reimbursement under paragraph (1)***
23 ***may be made from appropriated or non-***
24 ***appropriated 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 re-

ferred 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.".

1 ***SEC. 1056. PILOT PROJECT FOR CIVILIAN LINGUIST RE-***
2 ***SERVE CORPS.***

3 ***(a) PILOT PROJECT.—The National Intel-***
4 ***ligence Director shall conduct a pilot project***
5 ***to establish a Civilian Linguist Reserve Corps***
6 ***comprised of United States citizens with ad-***
7 ***vanced levels of proficiency in foreign lan-***
8 ***guages who would be available upon a call of***
9 ***the President to perform such service or duties***
10 ***with respect to such foreign languages in the***
11 ***Federal Government as the President may***
12 ***specify.***

13 ***(b) CONDUCT OF PROJECT.—Taking into ac-***
14 ***count the findings and recommendations con-***
15 ***tained in the report required under section 325***
16 ***of the Intelligence Authorization Act for Fiscal***
17 ***Year 2003 (Public Law 107–306; 116 Stat. 2393),***
18 ***in conducting the pilot project under sub-***
19 ***section (a) the National Intelligence Director***
20 ***shall—***

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

1 *(2) identify United States citizens with*
2 *advanced levels of proficiency in those*
3 *foreign languages who would be available*
4 *to perform the services and duties re-*
5 *ferred to in subsection (a); and*
6 *(3) implement a call for the perform-*
7 *ance of such services and duties.*
8 *(c) DURATION OF PROJECT.—The pilot*
9 *project under subsection (a) shall be con-*
10 *ducted for a three-year period.*
11 *(d) AUTHORITY TO ENTER INTO CON-*
12 *TRACTS.—The National Intelligence Director*
13 *may enter into contracts with appropriate*
14 *agencies or entities to carry out the pilot*
15 *project under subsection (a).*
16 *(e) REPORTS.—(1) The National Intel-*
17 *ligence Director shall submit to Congress an*
18 *initial and a final report on the pilot project*
19 *conducted under subsection (a).*
20 *(2) Each report required under paragraph*
21 *(1) shall contain information on the operation*
22 *of the pilot project, the success of the pilot*
23 *project in carrying out the objectives of the es-*
24 *tablishment 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

1 ***1021(b), is further amended by inserting after***
2 ***the item relating to section 119 the following***
3 ***new item:***

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

4 ***SEC. 1058. REPORT ON RECRUITMENT AND RETENTION OF***
5 ***QUALIFIED INSTRUCTORS OF THE DEFENSE***
6 ***LANGUAGE INSTITUTE.***

7 ***(a) STUDY.—The Secretary of Defense shall***
8 ***conduct a study on methods to improve the re-***
9 ***cruitment and retention of qualified foreign***
10 ***language instructors at the Foreign Language***
11 ***Center of the Defense Language Institute. In***
12 ***conducting the study, the Secretary shall con-***
13 ***sider, in the case of a foreign language in-***
14 ***structor who is an alien, to expeditiously ad-***
15 ***just the status of the alien from a temporary***
16 ***status to that of an alien lawfully admitted for***
17 ***permanent residence.***

18 ***(b) REPORT.—(1) Not later than one year***
19 ***after the date of the enactment of this Act, the***
20 ***Secretary of Defense shall submit to the appro-***
21 ***priate congressional committees a report on***
22 ***the study conducted under subsection (a), and***
23 ***shall include in that report recommendations***
24 ***for such changes in legislation and regulation***
25 ***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 ad-

vances, 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)).

(Q) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).

(R) Section 115(b) (50 U.S.C. 404j(b)).

(S) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).

(T) Section 116(a) (50 U.S.C. 404k(a)).

(U) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).

(V) Section 303(a) (50 U.S.C. 405(a)), both places it appears.

(W) Section 501(d) (50 U.S.C. 413(d)).

(X) Section 502(a) (50 U.S.C. 413a(a)).

(Y) Section 502(c) (50 U.S.C. 413a(c)).

(Z) Section 503(b) (50 U.S.C. 413b(b)).

(AA) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).

(BB) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(CC) Section 506A(a)(1) (50 U.S.C. 415a–1(a)(1)).

(DD) Section 603(a) (50 U.S.C. 423(a)).

(EE) Section 702(a)(1) (50 U.S.C. 432(a)(1)).

(FF) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).

(GG) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.

(HH) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).

(II) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).

(JJ) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.

(KK) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).

(LL) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).

(MM) Section 704(g)(1)) (50 U.S.C. 432b(g)(1)), both places it appears.

(NN) Section 1001(a) (50 U.S.C. 441g(a)).

(OO) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).

(PP) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).

(QQ) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).

(RR) 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)).

(D) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.

(E) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).

(F) 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).

(B) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).

(C) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).

(D) 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 Di-

rector 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 Director 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))".

1 *(B) Section 904 of that Act (50 U.S.C.*
2 *402c) is amended—*
3 *(i) in subsection (c), by striking*
4 *"Office of the Director of Central In-*
5 *telligence" and inserting "Office of the*
6 *National Intelligence Director"; and*
7 *(ii) in subsection (l), by striking*
8 *"Office of the Director of Central In-*
9 *telligence" and inserting "Office of the*
10 *National Intelligence Director".*
11 *(2) PUBLIC LAW 108–177.—Section 317 of*
12 *the Intelligence Authorization Act for Fis-*
13 *cal Year 2004 (Public Law 108–177; 50*
14 *U.S.C. 403–3 note) is amended—*
15 *(A) in subsection (g), by striking*
16 *"Assistant Director of Central Intel-*
17 *ligence for Analysis and Production"*
18 *and inserting "Deputy National Intel-*
19 *ligence Director"; and*
20 *(B) in subsection (h)(2)(C), by*
21 *striking "Assistant Director" and in-*
22 *serting "Deputy National Intelligence*
23 *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.

1 ***SEC. 1076. CLERICAL AMENDMENTS TO NATIONAL SECU-***
2 ***RITY ACT OF 1947.***

3 ***The table of contents for the National Se-***
4 ***curity Act of 1947 is amended—***

5 ***(1) by striking the items relating to***
6 ***sections 102 through 104 and inserting the***
7 ***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

8 ***(2) by striking the item relating to sec-***
9 ***tion 114 and inserting the following new***
10 ***item:***

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

11 ***and***

12 ***(3) by striking the item relating to sec-***
13 ***tion 506 and inserting the following new***
14 ***item:***

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

15 ***SEC. 1077. CONFORMING AMENDMENTS RELATING TO PRO-***
16 ***HIBITING DUAL SERVICE OF THE DIRECTOR***
17 ***OF THE CENTRAL INTELLIGENCE AGENCY.***

18 ***Section 1 of the Central Intelligence Agen-***
19 ***cy 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".

1 ***(b) DELETION OF INFORMATION ABOUT FOR-***
2 ***EIGN GIFTS.—Section 7342(f)(4) of title 5,***
3 ***United States Code, is amended—***
4 ***(1) by inserting "(A)" after "(4)";***
5 ***(2) in subparagraph (A), as so des-***
6 ***ignated, by striking "the Director of Cen-***
7 ***tral Intelligence" and inserting "the Di-***
8 ***rector of the Central Intelligence Agency";***
9 ***and***
10 ***(3) by adding at the end the following***
11 ***new subparagraph:***
12 ***"(B) In transmitting such listings for the***
13 ***Office of the National Intelligence Director,***
14 ***the National Intelligence Director may delete***
15 ***the information described in subparagraphs***
16 ***(A) and (C) of paragraphs (2) and (3) if the Di-***
17 ***rector certifies in writing to the Secretary of***
18 ***State that the publication of such information***
19 ***could adversely affect United States intel-***
20 ***ligence sources.".***
21 ***(c) EXEMPTION FROM FINANCIAL DISCLO-***
22 ***SURES.—Section 105(a)(1) of the Ethics in Gov-***
23 ***ernment Act (5 U.S.C. App.) is amended by in-***
24 ***serting "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 dis-

charged 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

SECTION 2001. INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

"(C) engages in international terrorism or activities in preparation therefor; or".

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 inci-

dent 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.

1 *"(d) ACTIVITIES OF LAW ENFORCEMENT.—*
2 *This section does not prohibit any lawfully au-*
3 *thorized investigative, protective, or intel-*
4 *ligence activity of a law enforcement agency of*
5 *the United States, a State, or political subdivi-*
6 *sion of a State, or of an intelligence agency of*
7 *the United States.".*
8 *(b) CLERICAL AMENDMENT.—The table of*
9 *sections as the beginning of chapter 47 of title*
10 *18, United States Code, is amended by adding*
11 *after the item for section 1037 the following:*

"1038. False information and hoaxes.".

12 *SEC. 2023. OBSTRUCTION OF JUSTICE AND FALSE STATE-*
13 *MENTS IN TERRORISM CASES.*
14 *(a) ENHANCED PENALTY.—Section 1001(a)*
15 *and the third undesignated paragraph of sec-*
16 *tion 1505 of title 18, United States Code, are*
17 *amended by striking "be fined under this title*
18 *or imprisoned not more than 5 years, or both"*
19 *and inserting "be fined under this title, im-*
20 *prisoned not more than 5 years or, if the mat-*
21 *ter relates to international or domestic ter-*
22 *rorism (as defined in section 2331), imprisoned*
23 *not more than 10 years, or both".*
24 *(b) SENTENCING GUIDELINES.—Not later*
25 *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).

1 *"(b) EXTRATERRITORIAL JURISDICTION.—*
2 *There is extraterritorial Federal jurisdiction*
3 *over an offense under this section. There is ju-*
4 *risdiction over an offense under subsection (a)*
5 *if—*
6 *"(1) an offender is a national of the*
7 *United States (as defined in 101(a)(22) of*
8 *the Immigration and Nationality Act) or*
9 *an alien lawfully admitted for permanent*
10 *residence in the United States (as defined*
11 *in section 101(a)(20) of the Immigration*
12 *and Nationality Act);*
13 *"(2) an offender is a stateless person*
14 *whose habitual residence is in the United*
15 *States;*
16 *"(3) after the conduct required for the*
17 *offense occurs an offender is brought into*
18 *or found in the United States, even if the*
19 *conduct required for the offense occurs*
20 *outside the United States;*
21 *"(4) the offense occurs in whole or in*
22 *part within the United States;*
23 *"(5) the offense occurs in or affects*
24 *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 in-

cluding 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 organization (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.".

1 *(d) FEDERAL AUTHORITY.—Section 2339B(d)*
2 *of title 18 is amended—*
3 *(1) by inserting "(1)" before "There";*
4 *and*
5 *(2) by adding at the end the following:*
6 *"(2) The circumstances referred to in para-*
7 *graph (1) are any of the following:*
8 *"(A) An offender is a national of the*
9 *United States (as defined in section*
10 *101(a)(22) of the Immigration and Nation-*
11 *ality Act (8 U.S.C. 1101(a)(22)) or an alien*
12 *lawfully admitted for permanent resi-*
13 *dence in the United States (as defined in*
14 *section 101(a)(20) of the Immigration and*
15 *Nationality Act.*
16 *"(B) An offender is a stateless person*
17 *whose habitual residence is in the United*
18 *States.*
19 *"(C) After the conduct required for the*
20 *offense occurs an offender is brought into*
21 *or found in the United States, even if the*
22 *conduct required for the offense occurs*
23 *outside the United States.*
24 *"(D) The offense occurs in whole or in*
25 *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.

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) 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)".

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:

1 *"(2) AUTHORIZATION FOR FUNDING KEY*
2 *TECHNOLOGICAL IMPROVEMENTS IN MISSION-*
3 *CRITICAL FINCEN SYSTEMS.—There are au-*
4 *thorized to be appropriated for fiscal year*
5 *2005 the following amounts, which are au-*
6 *thorized to remain available until ex-*
7 *pended:*
8 *"(A) BSA DIRECT.—For techno-*
9 *logical improvements to provide au-*
10 *thorized law enforcement and finan-*
11 *cial regulatory agencies with Web-*
12 *based access to FinCEN data, to fully*
13 *develop and implement the highly se-*
14 *cure network required under section*
15 *362 of Public Law 107–56 to expedite*
16 *the filing of, and reduce the filing*
17 *costs for, financial institution reports,*
18 *including suspicious activity reports,*
19 *collected by FinCEN under chapter 53*
20 *and related provisions of law, and en-*
21 *able FinCEN to immediately alert fi-*
22 *nancial institutions about suspicious*
23 *activities that warrant immediate and*
24 *enhanced scrutiny, and to provide*
25 *and upgrade advanced information-*

1 ***sharing technologies to materially im-***
2 ***prove the Government's ability to ex-***
3 ***ploit the information in the FinCEN***
4 ***databanks, $16,500,000.***
5 ***"(B) ADVANCED ANALYTICAL TECH-***
6 ***NOLOGIES.—To provide advanced ana-***
7 ***lytical tools needed to ensure that the***
8 ***data collected by FinCEN under chap-***
9 ***ter 53 and related provisions of law***
10 ***are utilized fully and appropriately in***
11 ***safeguarding financial institutions***
12 ***and supporting the war on terrorism,***
13 ***$5,000,000.***
14 ***"(C) DATA NETWORKING MODERNIZA-***
15 ***TION.—To improve the telecommuni-***
16 ***cations infrastructure to support the***
17 ***improved capabilities of the FinCEN***
18 ***systems, $3,000,000.***
19 ***"(D) ENHANCED COMPLIANCE CAPA-***
20 ***BILITY.—To improve the effectiveness***
21 ***of the Office of Compliance in***
22 ***FinCEN, $3,000,000.***
23 ***"(E) DETECTION AND PREVENTION***
24 ***OF FINANCIAL CRIMES AND TERRORISM.—***
25 ***To provide development of, and train-***

ing 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:

"2004	*$15,000,000.*
"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 subchapter 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 "non-governmental 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 insert-

ing "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 subchapter 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 subchapter 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".

SEC. 2123. REPORTING OF CROSS-BORDER TRANSMITTAL OF FUNDS.

Section 5318 of title 31, United States Code, is amended by adding at the end the following new subsection:

1 *"(n) REPORTING OF CROSS-BORDER TRANS-*
2 *MITTAL OF FUNDS.—*
3 *"(1) IN GENERAL.—Subject to para-*
4 *graph (3), the Secretary shall prescribe*
5 *regulations requiring such financial in-*
6 *stitutions as the Secretary determines to*
7 *be appropriate to report to the Financial*
8 *Crimes Enforcement Network certain*
9 *cross-border electronic transmittals of*
10 *funds relevant to efforts of the Secretary*
11 *against money laundering and terrorist*
12 *financing.*
13 *"(2) FORM AND MANNER OF REPORTS.—*
14 *In prescribing the regulations required*
15 *under paragraph (1), the Secretary shall*
16 *determine the appropriate form, manner,*
17 *content and frequency of filing of the re-*
18 *quired reports.*
19 *"(3) FEASIBILITY REPORT.—Before pre-*
20 *scribing the regulations required under*
21 *paragraph (1), and as soon as is prac-*
22 *ticable after the date of enactment of the*
23 *9/11 Recommendations Implementation*
24 *Act, the Secretary shall delegate to the*
25 *Bank Secrecy Act Advisory Group estab-*

lished by the Secretary the task of producing a report for the Secretary and the Congress that—

"(A) identifies the information in cross-border electronic transmittals of funds that is relevant to efforts against money laundering and terrorist financing;

"(B) makes recommendations regarding the appropriate form, manner, content and frequency of filing of the required reports; and

"(C) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

The report shall be submitted to the Secretary and the Congress no later than the end of the 1-year period beginning on the date of enactment of such Act.

"(4) REGULATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of the enactment of the 9/11 Recommendations Implementation Act.

"(B) TECHNOLOGICAL FEASIBILITY.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

"(5) RECORDKEEPING.—No financial institution required to submit reports on certain cross-border electronic transmittals of funds to the Financial Crimes Enforcement Network under this subsection shall be subject to the recordkeeping requirement under section 21(b)(3) of the Federal Deposit Insurance Act with respect to such transmittals of funds.".

SEC. 2124. ENHANCED EFFECTIVENESS OF EXAMINATIONS, INCLUDING ANTI-MONEY LAUNDERING PROGRAMS.

(a) DEPOSITORY INSTITUTIONS AND DEPOSITORY INSTITUTION HOLDING COMPANIES.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

"(k) POST-EMPLOYMENT LIMITATIONS ON LEADING BANK EXAMINERS.—

"(1) IN GENERAL.—In the case of any person who—

"(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank; and

1 *"(B) served 2 or more months dur-*
2 *ing the final 18 months of such per-*
3 *son's employment with such agency or*
4 *entity as the examiner-in-charge (or a*
5 *functionally equivalent position) of a*
6 *depository institution or depository in-*
7 *stitution holding company with dedi-*
8 *cated, overall, continuous, and ongo-*
9 *ing responsibility for the examination*
10 *(or inspection) and supervision of that*
11 *depository institution or depository in-*
12 *stitution holding company,*
13 *such person may not hold any office, posi-*
14 *tion, or employment at any such deposi-*
15 *tory institution or depository institution*
16 *holding company, become a controlling*
17 *shareholder in, a consultant for, a joint-*
18 *venture partner with, or an independent*
19 *contractor for (including as attorney, ap-*
20 *praiser, or accountant) any such deposi-*
21 *tory institution or holding company, or*
22 *any other company that controls such de-*
23 *pository institution, or otherwise partici-*
24 *pate in the conduct of the affairs of any*
25 *such depository institution or holding*

company, during the 1-year period beginning on such date.

"(2) VIOLATORS SUBJECT TO INDUSTRY-WIDE PROHIBITION ORDERS.—

"(A) IN GENERAL.—In addition to any other penalty which may apply, whenever the appropriate Federal banking agency determines that a person subject to paragraph (1) has violated the prohibition in such paragraph with respect to any insured depository institution or depository institution holding company or any other company, the agency shall serve a written notice or order, in accordance with and subject to the provisions of section 8(e)(4) for written notices under paragraphs (1) or (2) of section 8(e), upon such person of the agency's intention to—

"(i) remove such person from office in any capacity described in paragraph (1); and

"(ii) prohibit any further participation by such person, in any

manner, in the conduct of the affairs of any insured depository institution or depository institution holding company for a period of 5 years.

"(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under this subsection shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section and subsections (i) and (j) of section 8 and any other provision of this Act applicable to orders issued under subsection (e) or (g) shall apply with respect to such order.

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Federal banking agencies shall prescribe regulations to implement this subsection, including the manner for determining which persons are referred to in paragraph 1(B) taking into account—

"(i) the manner in which examiners and other persons who participate in the regulation, examination, or monitoring of depository institutions or depository institution holding companies are distributed among such institutions or companies by such agency, including the number of examiners and other persons assigned to each institution or holding company, the depth and structure of any group so assigned within such distribution, and the factors giving rise to that distribution;

"(ii) the number of institutions or companies each such examiner or other person is so involved with in any given period of assignment;

"(iii) the period of time for which each such examiner or other person is assigned to an institution or company, or a group of institutions or companies, before reassignment;

"(iv) the size of the institutions or holding companies for which each such person is responsible and the amount of time devoted to each such institution or holding company during each examination period; and

"(v) such other factors as the agency determines to be appropriate.

"(B) DETERMINATION OF APPLICABILITY.—The regulations prescribed or orders issued under this subparagraph by an appropriate Federal banking agency shall include a process, initiated by application or otherwise, for determining whether any person who ceases to be, or intends to cease to be, an examiner of, or a person having supervisory authority over, insured depository institutions or depository institution holding companies for or on behalf of such agency is subject to the limitations of this subsection with respect to any particular

insured depository institution or depository institution holding company.

"(C) CONSULTATION.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

"(4) WAIVER.—A Federal banking agency may waive, on a case-by-case basis, the restrictions imposed by this subsection if—

"(A) the head of the agency certifies in writing that the grant of such waiver would be not inconsistent with the public interest; and

"(B) the waiver is provided in advance before the person becomes affiliated in any way with the depository

1 *institution or depository institution*
2 *holding company.*
3 *"(5) DEFINITIONS AND RULES OF CON-*
4 *STRUCTION.—For purposes of this sub-*
5 *section, the following definitions and*
6 *rules shall apply:*
7 *"(A) DEPOSITORY INSTITUTION.—*
8 *The term 'depository institution' in-*
9 *cludes an uninsured branch or agency*
10 *of a foreign bank if such branch or*
11 *agency is located in any State.*
12 *"(B) DEPOSITORY INSTITUTION*
13 *HOLDING COMPANY.—The term 'deposi-*
14 *tory institution holding company' in-*
15 *cludes any foreign bank or company*
16 *described in section 8(a) of the Inter-*
17 *national Banking Act of 1978.*
18 *"(C) HEAD OF THE AGENCY.—The*
19 *term 'the head of agency' means—*
20 *"(i) the Comptroller of the*
21 *Currency, in the case of the Office*
22 *of the Comptroller of the Cur-*
23 *rency;*
24 *"(ii) the Chairman of the*
25 *Board of Governors of the Federal*

Reserve System, in the case of the Board of Governors of the Federal Reserve System;

"(iii) the Chairperson of the Board of Directors, in the case of the Federal Deposit Insurance Corporation; and

"(iv) the Director, in the case of the Office of Thrift Supervision.

"(D) RULE OF CONSTRUCTION FOR CONSULTANTS AND INDEPENDENT CONTRACTORS.—A person shall be deemed to act as a consultant or independent contractor (including as an attorney, appraiser, or accountant) for a depository institution or a depository holding company only if such person directly works on matters for, or on behalf of, such depository institution or depository holding company.

"(E) APPROPRIATE AGENCY FOR CERTAIN OTHER COMPANIES.—The term 'appropriate Federal banking agency' means, with respect to a company that is not a depository institution or de-

1 *pository institution holding company,*
2 *the Federal banking agency on whose*
3 *behalf the person described in para-*
4 *graph (1) performed the functions de-*
5 *scribed in paragraph (3).".*
6 *(b) CREDIT UNIONS.—Section 206 of the*
7 *Federal Credit Union Act (12 U.S.C. 1786) is*
8 *amended by adding at the end the following*
9 *new subsection:*
10 *"(w) POST-EMPLOYMENT LIMITATIONS ON EX-*
11 *AMINERS.—*
12 *"(1) REGULATIONS REQUIRED.—The*
13 *Board shall consult with the Federal*
14 *banking agencies and prescribe regula-*
15 *tions imposing the same limitations on*
16 *persons employed by or on behalf of the*
17 *Board as leading examiners of, or func-*
18 *tionally equivalent positions with respect*
19 *to, credit unions as are applicable under*
20 *section 10(k) of the Federal Deposit Insur-*
21 *ance Act, taking into account all the re-*
22 *quirements and factors described in para-*
23 *graphs (3) and (4) of such section.*
24 *"(2) ENFORCEMENT.—The Board shall*
25 *issue orders under subsection (g) with re-*

spect to any person who violates any regulation prescribed pursuant to paragraph (1) to—

"(A) remove such person from office in any capacity with respect to a credit union; and

"(B) prohibit any further participation by such person, in any manner, in the conduct of the affairs of any credit union for a period of 5 years.

"(3) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under this subsection shall be subject to paragraphs (5) and (7) of subsection (g) in the same manner and to the same extent as a person subject to an order issued under such subsection and subsection (l) and any other provision of this Act applicable to orders issued under subsection (g) shall apply with respect to such order.".

(c) STUDY OF EXAMINER HIRING AND RETENTION.—

(1) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance

Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration Board, acting through the Financial Institutions Examination Council, shall conduct a study of efforts and proposals for—

(A) retaining the services of experienced and highly qualified examiners and supervisors already employed by such agencies; and

(B) continuing to attract such examiners and supervisors on an-ongoing basis to the extent necessary to fulfill the agencies' obligations to maintain the safety and soundness of the Nation's depository institutions.

(2) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the agencies conducting the study under paragraph (1) shall submit a report containing the findings and conclusions of such agencies with respect to such study, together with

such recommendations for administrative or legislative changes as the agencies determine to be appropriate.

Subchapter C—Unlawful Internet Gambling Funding Prohibition

SEC. 2131. SHORT TITLE.

This subchapter may be cited as the "Unlawful Internet Gambling Funding Prohibition Act".

SEC. 2132. FINDINGS.

The Congress finds as follows:

(1) Internet gambling is primarily funded through personal use of bank instruments, including credit cards and wire transfers.

(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent them.

(3) Internet gambling is a major cause of debt collection problems for insured depository institutions and the consumer credit industry.

1 *(4) Internet gambling conducted*
2 *through offshore jurisdictions has been*
3 *identified by United States law enforce-*
4 *ment officials as a significant money*
5 *laundering vulnerability.*

6 *SEC. 2133. POLICIES AND PROCEDURES REQUIRED TO PRE-*
7 *VENT PAYMENTS FOR UNLAWFUL INTERNET*
8 *GAMBLING.*

9 *(a) REGULATIONS.—Before the end of the 6-*
10 *month period beginning on the date of the en-*
11 *actment of this subchapter, the Federal func-*
12 *tional regulators shall prescribe regulations*
13 *requiring any designated payment system to*
14 *establish policies and procedures reasonably*
15 *designed to identify and prevent restricted*
16 *transactions in any of the following ways:*

17 *(1) The establishment of policies and*
18 *procedures that—*

19 *(A) allow the payment system and*
20 *any person involved in the payment*
21 *system to identify restricted trans-*
22 *actions by means of codes in author-*
23 *ization messages or by other means;*
24 *and*

1 *(B) block restricted transactions*
2 *identified as a result of the policies*
3 *and procedures developed pursuant to*
4 *subparagraph (A).*
5 *(2) The establishment of policies and*
6 *procedures that prevent the acceptance of*
7 *the products or services of the payment*
8 *system in connection with a restricted*
9 *transaction.*
10 *(b) REQUIREMENTS FOR POLICIES AND PRO-*
11 *CEDURES.—In prescribing regulations pursu-*
12 *ant to subsection (a), the Federal functional*
13 *regulators shall—*
14 *(1) identify types of policies and proce-*
15 *dures, including nonexclusive examples,*
16 *which would be deemed to be "reasonably*
17 *designed to identify" and "reasonably de-*
18 *signed to block" or to "prevent the accept-*
19 *ance of the products or services" with re-*
20 *spect to each type of transaction, such as,*
21 *should credit card transactions be so des-*
22 *ignated, identifying transactions by a*
23 *code or codes in the authorization mes-*
24 *sage and denying authorization of a cred-*

it card transaction in response to an authorization message;

(2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing the acceptance of the products or services of the payment system or participant in connection with, restricted transactions; and

(3) consider exempting restricted transactions from any requirement under subsection (a) if the Federal functional regulators find that it is not reasonably practical to identify and block, or otherwise prevent, such transactions.

(c) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or a participant in such

network, meets the requirement of subsection (a) if—

(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—

(A) identify and block restricted transactions; or

(B) otherwise prevent the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

(2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a).

(d) ENFORCEMENT.—

(1) IN GENERAL.—This section shall be enforced by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act.

1 ***(2) FACTORS TO BE CONSIDERED.—In***
2 ***considering any enforcement action under***
3 ***this subsection against any payment sys-***
4 ***tem, or any participant in a payment sys-***
5 ***tem that is a creditor, credit card issuer,***
6 ***financial institution, operator of a ter-***
7 ***minal at which an electronic fund trans-***
8 ***fer may be initiated, money transmitting***
9 ***business, or international, national, re-***
10 ***gional, or local network utilized to effect***
11 ***a credit transaction, electronic fund***
12 ***transfer, or money transmitting service, or***
13 ***a participant in such network, the Fed-***
14 ***eral functional regulators and the Fed-***
15 ***eral Trade Commission shall consider the***
16 ***following factors:***
17 ***(A) The extent to which such per-***
18 ***son is extending credit or transmit-***
19 ***ting funds knowing the transaction is***
20 ***in connection with unlawful Internet***
21 ***gambling.***
22 ***(B) The history of such person in***
23 ***extending credit or transmitting***
24 ***funds knowing the transaction is in***

connection with unlawful Internet gambling.

(C) The extent to which such person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

(D) The feasibility that any specific remedy prescribed can be implemented by such person without substantial deviation from normal business practice.

(E) The costs and burdens the specific remedy will have on such person.

SEC. 2134. DEFINITIONS.

For purposes of this subchapter, the following definitions shall apply:

(1) RESTRICTED TRANSACTION.—The term "restricted transaction" means any transaction or transmittal to any person engaged in the business of betting or wagering, in connection with the participation of another person in unlawful Internet gambling, of—

(A) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the other person;

(C) any check, draft, or similar instrument which is drawn by or on behalf of the other person and is drawn on or payable at or through any financial institution; or

(D) the proceeds of any other form of financial transaction as the Federal functional regulators may prescribe by regulation which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.

(2) BETS OR WAGERS.—The term "bets or wagers"—

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28, United States Code;

(D) includes any instructions or information pertaining to the establishment or movement of funds in an account by the bettor or customer with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of such Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade pursuant to the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that—

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(viii) any participation in a simulation sports game or an educational game or contest that—

(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events; and

(III) offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants; and

(ix) any lawful transaction with a business licensed or authorized by a State, and for purposes of this clause, the term "lawful transaction" means any transaction that is lawful under all applicable Federal laws and all applicable State laws of both the State in which the licensed or authorized business is located and the State where the bet is initiated.

(3) DESIGNATED PAYMENT SYSTEM DEFINED.—The term "designated payment system" means any system utilized by any creditor, credit card issuer, financial institution, operator of a terminal at which

an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, that the Federal functional regulators determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) FEDERAL FUNCTIONAL REGULATOR.—The term "Federal functional regulator" has the same meaning as in section 509(2) of the Gramm-Leach-Bliley Act.

(5) INTERNET.—The term "Internet" means the international computer network of interoperable packet switched data networks.

(6) UNLAWFUL INTERNET GAMBLING.—The term "unlawful Internet gambling" means to place, receive, or otherwise transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is

1 *unlawful under any applicable Federal or*
2 *State law in the State in which the bet or*
3 *wager is initiated, received, or otherwise*
4 *made.*
5 *(7) OTHER TERMS.—*
6 *(A) CREDIT; CREDITOR; AND CREDIT*
7 *CARD.—The terms "credit", "creditor",*
8 *and "credit card" have the meanings*
9 *given such terms in section 103 of the*
10 *Truth in Lending Act.*
11 *(B) ELECTRONIC FUND TRANSFER.—*
12 *The term "electronic fund transfer"—*
13 *(i) has the meaning given such*
14 *term in section 903 of the Elec-*
15 *tronic Fund Transfer Act; and*
16 *(ii) includes any fund transfer*
17 *covered by Article 4A of the Uni-*
18 *form Commercial Code, as in ef-*
19 *fect in any State.*
20 *(C) FINANCIAL INSTITUTION.—The*
21 *term "financial institution"—*
22 *(i) has the meaning given such*
23 *term in section 903 of the Elec-*
24 *tronic Fund Transfer Act; and*

(ii) includes any financial institution, as defined in section 509(3) of the Gramm-Leach-Bliley Act.

(D) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms "money transmitting business" and "money transmitting service" have the meanings given such terms in section 5330(d) of title 31, United States Code.

SEC. 2135. COMMON SENSE RULE OF CONSTRUCTION.

No provision of this subchapter shall be construed as altering, limiting, extending, changing the status of, or otherwise affecting any law relating to, affecting, or regulating gambling within the United States.

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".

SEC. 2142. CRIMINAL HISTORY INFORMATION 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 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.

1 *"(3) The Director of the Federal Bureau of*
2 *Investigation may require an employer to pay*
3 *a reasonable fee for such information.*
4 *"(4) Upon receipt of fingerprints or other*
5 *biometric identifiers, the Attorney General*
6 *shall conduct an Integrated Fingerprint Iden-*
7 *tification System of the Federal Bureau of In-*
8 *vestigation (IAFIS) check and provide the re-*
9 *sults of such check to the requester.*
10 *"(5) As used in this subsection,*
11 *"(A) the term 'criminal history infor-*
12 *mation' and 'criminal history records' in-*
13 *cludes—*
14 *"(i) an identifying description of*
15 *the individual to whom it pertains;*
16 *"(ii) notations of arrests, deten-*
17 *tions, indictments, or other formal*
18 *criminal charges pertaining to such*
19 *individual; and*
20 *"(iii) any disposition to a notation*
21 *revealed in subparagraph (B), includ-*
22 *ing acquittal, sentencing, correctional*
23 *supervision, or release.*
24 *"(B) the term 'Integrated Automated*
25 *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)).".

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, 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.

1 *(2) IDENTIFICATION OF INFORMATION.—*
2 *The Attorney General shall identify the*
3 *number of records requested, including*
4 *the type of information requested, usage*
5 *of different terms and definitions regard-*
6 *ing criminal history information, and the*
7 *variation in fees charged for such infor-*
8 *mation and who pays such fees.*
9 *(3) RECOMMENDATIONS.—The Attorney*
10 *General shall make recommendations for*
11 *consolidating the existing procedures into*
12 *a unified procedure consistent with that*
13 *provided in section 534(f) of title 28,*
14 *United States Code, as amended by this*
15 *subtitle.*

16 ***Subtitle G—Protection of United***
17 ***States Aviation System From***
18 ***Terrorist Attacks***

19 *SEC. 2171. PROVISION FOR THE USE OF BIOMETRIC OR*
20 *OTHER TECHNOLOGY.*

21 *(a) USE OF BIOMETRIC TECHNOLOGY.—Sec-*
22 *tion 44903(h) of title 49, United States Code, is*
23 *amended—*
24 *(1) in paragraph (4)(E) by striking*
25 *"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 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;

1 *"(C) procedures for implementing*
2 *biometric systems—*
3 *"(i) to ensure that individuals*
4 *do not use an assumed identity to*
5 *enroll in a biometric system; and*
6 *"(ii) to resolve failures to en-*
7 *roll, false matches, and false non-*
8 *matches; and*
9 *"(D) best practices for incor-*
10 *porating biometric technology into*
11 *airport access control systems in the*
12 *most effective manner, including a*
13 *process to best utilize existing airport*
14 *access control systems, facilities, and*
15 *equipment and existing data networks*
16 *connecting airports.*
17 *"(6) USE OF BIOMETRIC TECHNOLOGY*
18 *FOR LAW ENFORCEMENT OFFICER TRAVEL.—*
19 *"(A) IN GENERAL.—Not later than*
20 *120 days after the date of enactment*
21 *of this paragraph, the Assistant Sec-*
22 *retary shall—*
23 *"(i) establish a law enforce-*
24 *ment officer travel credential that*
25 *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

1 *"(III) to invalidate any*
2 *travel credential that is lost,*
3 *stolen, or no longer authorized*
4 *for use;*
5 *"(iv) begin issuance of the*
6 *travel credential to each Federal,*
7 *State, and local government law*
8 *enforcement officer authorized by*
9 *the Assistant Secretary to carry a*
10 *weapon on board an aircraft; and*
11 *"(v) take such other actions*
12 *with respect to the travel creden-*
13 *tial as the Secretary considers ap-*
14 *propriate.*
15 *"(B) FUNDING.—There are author-*
16 *ized to be appropriated such sums as*
17 *may be necessary to carry out this*
18 *paragraph.*
19 *"(7) DEFINITIONS.—In this subsection,*
20 *the following definitions apply:*
21 *"(A) BIOMETRIC INFORMATION.—The*
22 *term 'biometric information' means*
23 *the distinct physical or behavioral*
24 *characteristics that are used for iden-*

tification, 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 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 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) 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:

1 *"(C) NEXT GENERATION AIRLINE PAS-*
2 *SENGER PRESCREENING.—*
3 *"(i) COMMENCEMENT OF TEST-*
4 *ING.—Not later than November 1,*
5 *2004, the Assistant Secretary of*
6 *Homeland Security (Transpor-*
7 *tation Security Administration),*
8 *or the designee of the Assistant*
9 *Secretary, shall commence testing*
10 *of a next generation passenger*
11 *prescreening system that will*
12 *allow the Department of Home-*
13 *land Security to assume the per-*
14 *formance of comparing passenger*
15 *name records to the automatic se-*
16 *lectee and no fly lists, utilizing all*
17 *appropriate records in the consoli-*
18 *dated and integrated terrorist*
19 *watchlist maintained by the Fed-*
20 *eral Government.*
21 *"(ii) ASSUMPTION OF FUNC-*
22 *TION.—Not later than 180 days*
23 *after completion of testing under*
24 *clause (i), the Assistant Secretary,*
25 *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 cor-

1 *rect information contained in*
2 *the system;*
3 *"(II) ensure that Federal*
4 *Government databases that*
5 *will be used to establish the*
6 *identity of a passenger under*
7 *the system will not produce a*
8 *large number of false*
9 *positives;*
10 *"(III) establish an internal*
11 *oversight board to oversee and*
12 *monitor the manner in which*
13 *the system is being imple-*
14 *mented;*
15 *"(IV) establish sufficient*
16 *operational safeguards to re-*
17 *duce the opportunities for*
18 *abuse;*
19 *"(V) implement substan-*
20 *tial security measures to pro-*
21 *tect the system from unauthor-*
22 *ized access;*
23 *"(VI) adopt policies estab-*
24 *lishing effective oversight of*

1 *the use and operation of the*
2 *system; and*
3 *"(VII) ensure that there*
4 *are no specific privacy con-*
5 *cerns with the technological*
6 *architecture of the system.*
7 *"(iv) PASSENGER NAME*
8 *RECORDS.—Not later than 60 days*
9 *after the completion of the testing*
10 *of the next generation passenger*
11 *prescreening system, the Assistant*
12 *Secretary shall require air car-*
13 *riers to supply to the Assistant*
14 *Secretary the passenger name*
15 *records needed to begin imple-*
16 *menting the next generation pas-*
17 *senger prescreening system.*
18 *"(D) SCREENING OF EMPLOYEES*
19 *AGAINST WATCHLIST.—The Assistant*
20 *Secretary of Homeland Security*
21 *(Transportation Security Administra-*
22 *tion), in coordination with the Sec-*
23 *retary of Transportation and the Ad-*
24 *ministrator of the Federal Aviation*
25 *Administration, shall ensure that in-*

1 *dividuals are screened against all ap-*
2 *propriate records in the consolidated*
3 *and integrated terrorist watchlist*
4 *maintained by the Federal Govern-*
5 *ment before—*
6 *"(i) being certificated by the*
7 *Federal Aviation Administration;*
8 *"(ii) being issued a credential*
9 *for access to the secure area of an*
10 *airport; or*
11 *"(iii) being issued a credential*
12 *for access to the air operations*
13 *area (as defined in section 1540.5*
14 *of title 49, Code of Federal Regula-*
15 *tions, or any successor regulation*
16 *to such section) of an airport.*
17 *"(E) APPEAL PROCEDURES.—The As-*
18 *sistant Secretary shall establish a*
19 *timely and fair process for individuals*
20 *identified as a threat under subpara-*
21 *graph (D) to appeal the determination*
22 *and correct any erroneous informa-*
23 *tion.*
24 *"(F) DEFINITION.—In this para-*
25 *graph, the term 'secure area of an air-*

port' 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

1 ***deploying technology at screening checkpoints***
2 ***at airports that will detect nonmetallic weap-***
3 ***ons and explosives on the person of individ-***
4 ***uals, in their clothing, or in their carry-on***
5 ***baggage or personal property and shall ensure***
6 ***that the equipment alone, or as part of an inte-***
7 ***grated system, can detect under realistic oper-***
8 ***ating conditions the types of nonmetallic***
9 ***weapons and explosives that terrorists would***
10 ***likely try to smuggle aboard an air carrier air-***
11 ***craft.***
12 ***(b) STRATEGIC PLAN FOR DEPLOYMENT AND***
13 ***USE OF EXPLOSIVE DETECTION EQUIPMENT AT***
14 ***AIRPORT SCREENING CHECKPOINTS.—***
15 ***(1) IN GENERAL.—Not later than 90***
16 ***days after the date of enactment of this***
17 ***Act, the Assistant Secretary shall transmit***
18 ***to the appropriate congressional commit-***
19 ***tees a strategic plan to promote the opti-***
20 ***mal utilization and deployment of explo-***
21 ***sive detection systems at airports to screen***
22 ***individuals and their carry-on baggage or***
23 ***personal property, including walk-***
24 ***through explosive detection portals, docu-***
25 ***ment 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.

1 ***(b) INCENTIVES FOR PARTICIPATION IN PILOT***
2 ***PROGRAM.—***
3 ***(1) IN GENERAL.—As part of the pilot***
4 ***program, the Assistant Secretary shall***
5 ***provide incentives to air carriers to volun-***
6 ***teer to test the use of blast-resistant con-***
7 ***tainers for cargo and baggage on pas-***
8 ***senger aircraft.***
9 ***(2) APPLICATIONS.—To volunteer to***
10 ***participate in the incentive program, an***
11 ***air carrier shall submit to the Assistant***
12 ***Secretary an application that is in such***
13 ***form and contains such information as***
14 ***the Assistant Secretary requires.***
15 ***(3) TYPES OF ASSISTANCE.—Assistance***
16 ***provided by the Assistant Secretary to air***
17 ***carriers that volunteer to participate in***
18 ***the pilot program shall include the use of***
19 ***blast-resistant containers and financial***
20 ***assistance to cover increased costs to the***
21 ***carriers associated with the use and***
22 ***maintenance of the containers, including***
23 ***increased fuel costs.***
24 ***(c) REPORT.—Not later than one year after***
25 ***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

1 *$30,000,000 derived from fees received*
2 *under subsection (a)(1) shall be available*
3 *to be deposited in the Fund.*
4 *"(3) FEES.—The Secretary of Home-*
5 *land Security shall impose the fee author-*
6 *ized by subsection (a)(1) so as to collect at*
7 *least $30,000,000 in each of fiscal years*
8 *2005 and 2006 for deposit into the Fund.*
9 *"(4) AVAILABILITY OF AMOUNTS.—*
10 *Amounts in the Fund shall be available*
11 *for the purchase, deployment, and instal-*
12 *lation of equipment to improve the ability*
13 *of security screening personnel at screen-*
14 *ing checkpoints to detect explosives.".*
15 *SEC. 2178. NEXT GENERATION SECURITY CHECKPOINT.*
16 *(a) PILOT PROGRAM.—The Transportation*
17 *Security Administration shall develop, not*
18 *later than 120 days after the date of enactment*
19 *of this Act, and conduct a pilot program to*
20 *test, integrate, and deploy next generation se-*
21 *curity checkpoint screening technology at not*
22 *less than 5 airports in the United States.*
23 *(b) HUMAN FACTOR STUDIES.— The Admin-*
24 *istration 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 IN-FLIGHT counterterrorism TRAINING.

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 Administra-

1 ***tion), shall make available appropriate in-***
2 ***flight counterterrorism procedures and tactics***
3 ***training to Federal law enforcement officers***
4 ***who fly while on duty.***

5 ***SEC. 2182. FEDERAL FLIGHT DECK OFFICER WEAPON CAR-***
6 ***RIAGE PILOT PROGRAM.***

7 ***(a) IN GENERAL.—Not later than 90 days***
8 ***after the date of enactment of this Act, the As-***
9 ***sistant Secretary of Homeland Security***
10 ***(Transportation Security Administration)***
11 ***shall implement a pilot program to allow pi-***
12 ***lots participating in the Federal flight deck of-***
13 ***ficer program to transport their firearms on***
14 ***their persons. The Assistant Secretary may***
15 ***prescribe any training, equipment, or proce-***
16 ***dures that the Assistant Secretary determines***
17 ***necessary to ensure safety and maximize weap-***
18 ***on retention.***

19 ***(b) REVIEW.—Not later than 1 year after the***
20 ***date of initiation of the pilot program, the As-***
21 ***sistant Secretary shall conduct a review of the***
22 ***safety record of the pilot program and trans-***
23 ***mit a report on the results of the review to the***
24 ***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 technology 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. DEFINITIONS.

In this title, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term "appropriate congressional committees" means the Committee on Transportation and Infrastructure 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 information under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and the National Intellience 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 sub-

section" 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;

1 *(2) intelligence production, including*
2 *product standards, production priorities,*
3 *information sharing and dissemination,*
4 *and customer satisfaction measures;*
5 *(3) production of intelligence that is*
6 *responsive to national intelligence re-*
7 *quirements and priorities, including*
8 *measures of the degree to which each FBI*
9 *headquarters and field component is col-*
10 *lecting and providing such intelligence;*
11 *(4) intelligence sources, including*
12 *source validation, new source develop-*
13 *ment, and performance measures;*
14 *(5) field intelligence operations, in-*
15 *cluding staffing and infrastructure, man-*
16 *agement processes, priorities, and per-*
17 *formance measures;*
18 *(6) full and seamless coordination*
19 *and cooperation with the other compo-*
20 *nents of the Intelligence Community, con-*
21 *sistent with their responsibilities; and*
22 *(7) sharing of FBI intelligence and in-*
23 *formation across Federal, state, and local*
24 *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 Investiga-

tion 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 as-

signments 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.

(f) 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.

(g) 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.

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 in-

dividually 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 para-

graph (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 pa-

1 ***trol agents within the Department of Home-***
2 ***land Security above the number of such posi-***
3 ***tions for which funds were allotted for the pre-***
4 ***ceding fiscal year.***

5 ***SEC. 3004. INCREASE IN FULL-TIME IMMIGRATION AND CUS-***
6 ***TOMS ENFORCEMENT INVESTIGATORS.***

7 ***The Secretary of Homeland Security, in***
8 ***each of fiscal years 2006 through 2010, shall***
9 ***increase by not less than 800 the number of po-***
10 ***sitions for full-time active-duty investigators***
11 ***within the Department of Homeland Security***
12 ***investigating violations of immigration laws***
13 ***(as defined in section 101(a)(17) of the Immi-***
14 ***gration and Nationality Act (8 U.S.C.***
15 ***1101(a)(17)) above the number of such posi-***
16 ***tions for which funds were allotted for the pre-***
17 ***ceding fiscal year. At least half of these addi-***
18 ***tional investigators shall be designated to in-***
19 ***vestigate potential violations of section 274A of***
20 ***the Immigration and Nationality Act (8 U.S.C***
21 ***1324a). Each State shall be allotted at least 3***
22 ***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 perse-

cuting 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 administra-

tive 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 *(1) by striking "Attorney General" and*
2 *inserting "Secretary of Homeland Secu-*
3 *rity"; and*
4 *(2) by striking the final two sentences.*
5 *(d) EFFECTIVE DATE.—The amendments*
6 *made by this section shall take effect on the*
7 *date of the enactment of this Act and shall*
8 *apply to revocations under sections 205 and*
9 *221(i) of the Immigration and Nationality Act*
10 *made before, on, or after such date.*

11 *SEC. 3009. JUDICIAL REVIEW OF ORDERS OF REMOVAL.*

12 *(a) IN GENERAL.—Section 242 of the Immi-*
13 *gration and Nationality Act (8 U.S.C. 1252) is*
14 *amended—*
15 *(1) in subsection (a)—*
16 *(A) in paragraph (2)—*
17 *(i) in subparagraphs (A), (B),*
18 *and (C), by inserting "(statutory*
19 *and nonstatutory), including sec-*
20 *tion 2241 of title 28, United States*
21 *Code, or any other habeas corpus*
22 *provision, and sections 1361 and*
23 *1651 of title 28, United States*
24 *Code" after "Notwithstanding any*
25 *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:

1 *"(4) CLAIMS UNDER THE UNITED NATIONS*
2 *CONVENTION.—Notwithstanding any other*
3 *provision of law (statutory and nonstatu-*
4 *tory), including section 2241 of title 28,*
5 *United States Code, or any other habeas*
6 *corpus provision, and sections 1361 and*
7 *1651 of title 28, United States Code, a peti-*
8 *tion for review by the circuit courts of ap-*
9 *peals filed in accordance with this section*
10 *is the sole and exclusive means of judicial*
11 *review of claims arising under the United*
12 *Nations Convention Against Torture and*
13 *Other Forms of Cruel, Inhuman, or De-*
14 *grading Treatment or Punishment.*
15 *"(5) EXCLUSIVE MEANS OF REVIEW.—The*
16 *judicial review specified in this sub-*
17 *section shall be the sole and exclusive*
18 *means for review by any court of an order*
19 *of removal entered or issued under any*
20 *provision of this Act. For purposes of this*
21 *title, in every provision that limits or*
22 *eliminates judicial review or jurisdiction*
23 *to review, the terms 'judicial review' and*
24 *'jurisdiction to review' include habeas*
25 *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.

1 *(2) EXCLUSION OF CERTAIN ALIENS.—The*
2 *revision—*
3 *(A) shall exclude from the protec-*
4 *tion of such regulations aliens de-*
5 *scribed in section 241(b)(3)(B) of the*
6 *Immigration and Nationality Act (8*
7 *U.S.C. 1231(b)(3)(B)) (as amended by*
8 *this title), including rendering such*
9 *aliens ineligible for withholding or*
10 *deferral of removal under the Conven-*
11 *tion; and*
12 *(B) shall ensure that the revised*
13 *regulations operate so as to—*
14 *(i) allow for the reopening of*
15 *determinations made under the*
16 *regulations before the effective*
17 *date of the revision; and*
18 *(ii) apply to acts and condi-*
19 *tions constituting a ground for in-*
20 *eligibility for the protection of*
21 *such regulations, as revised, re-*
22 *gardless of when such acts or con-*
23 *ditions occurred.*
24 *(3) BURDEN OF PROOF.—The revision*
25 *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 Se-

curity, 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 in-

serting "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.

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

1 *identification card, as defined in section*
2 *1028(d) of title 18, United States Code,*
3 *issued by a State.*
4 *(3) SECRETARY.—The term "Secretary"*
5 *means the Secretary of Homeland Secu-*
6 *rity.*
7 *(4) STATE.—The term "State" means a*
8 *State of the United States, the District of*
9 *Columbia, Puerto Rico, the Virgin Is-*
10 *lands, Guam, American Samoa, the*
11 *Northern Mariana Islands, the Trust Ter-*
12 *ritory of the Pacific Islands, and any*
13 *other territory or possession of the United*
14 *States.*
15 *SEC. 3052. MINIMUM DOCUMENT REQUIREMENTS AND*
16 *ISSUANCE STANDARDS FOR FEDERAL REC-*
17 *OGNITION.*
18 *(a) MINIMUM STANDARDS FOR FEDERAL*
19 *USE.—*
20 *(1) IN GENERAL.—Beginning 3 years*
21 *after the date of enactment of this Act, a*
22 *Federal agency may not accept, for any of-*
23 *ficial purpose, a driver's license or identi-*
24 *fication card issued by a State to any per-*

son 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.

1 *(7) The person's signature.*

2 *(8) Physical security features designed*
3 *to prevent tampering, counterfeiting, or*
4 *duplication of the document for fraudu-*
5 *lent purposes.*

6 *(9) A common machine-readable tech-*
7 *nology, with defined minimum data ele-*
8 *ments.*

9 *(c) MINIMUM ISSUANCE STANDARDS.—*

10 *(1) IN GENERAL.—To meet the require-*
11 *ments of this section, a State shall re-*
12 *quire, at a minimum, presentation and*
13 *verification of the following information*
14 *before issuing a driver's license or identi-*
15 *fication card to a person:*

16 *(A) A photo identity document, ex-*
17 *cept that a non-photo identity docu-*
18 *ment is acceptable if it includes both*
19 *the person's full legal name and date*
20 *of birth.*

21 *(B) Documentation showing the*
22 *person's date of birth.*

23 *(C) Proof of the person's social se-*
24 *curity 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 interstate 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 con-

forming 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 defini-

1 ***tions contained in section 3051 apply to this***
2 ***chapter.***
3 ***(b) OTHER DEFINITIONS.—In this chapter,***
4 ***the following definitions apply:***
5 ***(1) BIRTH CERTIFICATE.—The term***
6 ***"birth certificate" means a certificate of***
7 ***birth—***
8 ***(A) for an individual (regardless***
9 ***of where born)—***
10 ***(i) who is a citizen or national***
11 ***of the United States at birth; and***
12 ***(ii) whose birth is registered***
13 ***in the United States; and***
14 ***(B) that—***
15 ***(i) is issued by a Federal,***
16 ***State, or local government agency***
17 ***or authorized custodian of record***
18 ***and produced from birth records***
19 ***maintained by such agency or cus-***
20 ***todian of record; or***
21 ***(ii) is an authenticated copy,***
22 ***issued by a Federal, State, or local***
23 ***government agency or authorized***
24 ***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 *(1) IN GENERAL.—Beginning 3 years*
2 *after the date of enactment of this Act, a*
3 *Federal agency may not accept, for any of-*
4 *ficial purpose, a birth certificate issued*
5 *by a State to any person unless the State*
6 *is meeting the requirements of this sec-*
7 *tion.*
8 *(2) STATE CERTIFICATIONS.—The Sec-*
9 *retary shall determine whether a State is*
10 *meeting the requirements of this section*
11 *based on certifications made by the State*
12 *to the Secretary. Such certifications shall*
13 *be made at such times and in such man-*
14 *ner as the Secretary, in consultation with*
15 *the Secretary of Health and Human Serv-*
16 *ices, may prescribe by regulation.*
17 *(b) MINIMUM DOCUMENT STANDARDS.—To*
18 *meet the requirements of this section, a State*
19 *shall include, on each birth certificate issued*
20 *to a person by the State, the use of safety*
21 *paper, the seal of the issuing custodian of*
22 *record, and such other features as the Sec-*
23 *retary may determine necessary to prevent*
24 *tampering, counterfeiting, and otherwise du-*
25 *plicating 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

1 ***whether violations are sufficiently en-***
2 ***forced.***

3 ***SEC. 3065. ELECTRONIC VERIFICATION OF VITAL EVENTS.***

4 ***(a) LEAD AGENCY.—The Secretary shall***
5 ***lead the implementation of electronic***
6 ***verification of a person's birth and death.***

7 ***(b) REGULATIONS.—In carrying out sub-***
8 ***section (a), the Secretary shall issue regula-***
9 ***tions to establish a means by which authorized***
10 ***Federal and State agency users with a single***
11 ***interface will be able to generate an electronic***
12 ***query to any participating vital records juris-***
13 ***diction throughout the Nation to verify the***
14 ***contents of a paper birth certificate. Pursuant***
15 ***to the regulations, an electronic response from***
16 ***the participating vital records jurisdiction as***
17 ***to whether there is a birth record in their***
18 ***database that matches the paper birth certifi-***
19 ***cate will be returned to the user, along with***
20 ***an indication if the matching birth record has***
21 ***been flagged "deceased". The regulations shall***
22 ***take effect not later than 5 years after the date***
23 ***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 derivative 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 indi-

vidual or include on any such licence, 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

1 ***independent verification of any birth record***
2 ***provided by the applicant in support of the ap-***
3 ***plication. The Commissioner may provide by***
4 ***regulation for reasonable exceptions from the***
5 ***requirement for independent verification***
6 ***under this subclause in any case in which the***
7 ***Commissioner determines there is minimal op-***
8 ***portunity for fraud.".***

9 ***(b) EFFECTIVE DATE.—The amendment***
10 ***made by subsection (a) shall apply with re-***
11 ***spect to applications filed after 270 days after***
12 ***the date of the enactment of this Act.***

13 ***(c) STUDY REGARDING APPLICATIONS FOR RE-***
14 ***PLACEMENT SOCIAL SECURITY CARDS.—***

15 ***(1) IN GENERAL.—As soon as prac-***
16 ***ticable after the date of the enactment of***
17 ***this Act, the Commissioner of Social Secu-***
18 ***rity shall undertake a study to test the***
19 ***feasibility and cost effectiveness of***
20 ***verifying all identification documents***
21 ***submitted by an applicant for a replace-***
22 ***ment social security card. As part of such***
23 ***study, the Commissioner shall determine***
24 ***the feasibility of, and the costs associated***
25 ***with, the development of appropriate elec-***

tronic 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 *(1) IN GENERAL.—As soon as prac-*
2 *ticable after the date of the enactment of*
3 *this Act, the Commissioner of Social Secu-*
4 *rity shall undertake a study to determine*
5 *the most efficient options for ensuring the*
6 *integrity of the process for enumeration at*
7 *birth. Such study shall include an exam-*
8 *ination of available methods for recon-*
9 *ciling hospital birth records with birth*
10 *registrations submitted to agencies of*
11 *States and political subdivisions thereof*
12 *and with information provided to the*
13 *Commissioner as part of the process for*
14 *enumeration at birth.*
15 *(2) REPORT.—Not later than 18 months*
16 *after the date of the enactment of this Act,*
17 *the Commissioner shall report to the Com-*
18 *mittee on Ways and Means of the House of*
19 *Representatives and the Committee on Fi-*
20 *nance of the Senate regarding the results*
21 *of the study undertaken under paragraph*
22 *(1). Such report shall contain such rec-*
23 *ommendations for legislative changes as*
24 *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 photo-

graphic 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, ex-

cept 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,

1 *(2) have not been admitted for perma-*
2 *nent residence, and*
3 *(3) are not authorized by the Secretary*
4 *of Homeland Security to work in the*
5 *United States, or are so authorized sub-*
6 *ject to one or more restrictions,*
7 *so as to include an indication of such lack of*
8 *authorization to work or such restrictions on*
9 *such an authorization.*
10 *(b) REPORT.—Not later than 1 year after*
11 *the date of the enactment of this Act, the Com-*
12 *missioner shall report to the Committee on*
13 *Ways and Means of the House of Representa-*
14 *tives and the Committee on Finance of the Sen-*
15 *ate regarding the results of the study under-*
16 *taken under this section. Such report shall in-*
17 *clude the Commissioner's recommendations of*
18 *feasible options for modifying the social secu-*
19 *rity account number in the manner described*
20 *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 For-

eign 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.—Sec-

1 ***tion 305(a) of the Enhanced Border Security***
2 ***and Visa Entry Reform Act of 2002 (8 U.S.C.***
3 ***1734(a)) is amended by adding at the end the***
4 ***following: "As part of the consular training***
5 ***provided to such officers by the Secretary of***
6 ***State, such officers shall also receive training***
7 ***in detecting fraudulent documents and gen-***
8 ***eral document forensics and shall be required***
9 ***as part of such training to work with immigra-***
10 ***tion officers conducting inspections of appli-***
11 ***cants for admission into the United States at***
12 ***ports of entry.".***

13 ***(d) ASSIGNMENT OF ANTI-FRAUD SPECIAL-***
14 ***ISTS.—***

15 ***(1) SURVEY REGARDING DOCUMENT***
16 ***FRAUD.—The Secretary of State, in coordi-***
17 ***nation with the Secretary of Homeland***
18 ***Security, shall conduct a survey of each***
19 ***diplomatic and consular post at which***
20 ***visas are issued to assess the extent to***
21 ***which fraudulent documents are pre-***
22 ***sented by visa applicants to consular offi-***
23 ***cers at such posts.***

24 ***(2) PLACEMENT OF SPECIALIST.—Not***
25 ***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 consults with the Attorney General and provides writ-

ten 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.".

1 ***(b) INTERNATIONAL AGREEMENTS TO TRACK***
2 ***AND CURTAIL TERRORIST TRAVEL.—***
3 ***(1) INTERNATIONAL AGREEMENT ON***
4 ***LOST, STOLEN, OR FALSIFIED DOCUMENTS.—***
5 ***The President shall lead efforts to track***
6 ***and curtail the travel of terrorists by sup-***
7 ***porting the drafting, adoption, and imple-***
8 ***mentation of international agreements,***
9 ***and by supporting the expansion of exist-***
10 ***ing international agreements, to track***
11 ***and stop international travel by terrorists***
12 ***and other criminals through the use of***
13 ***lost, stolen, or falsified documents to aug-***
14 ***ment existing United Nations and other***
15 ***international anti-terrorism efforts.***
16 ***(2) CONTENTS OF INTERNATIONAL AGREE-***
17 ***MENT.—The President shall seek, in the***
18 ***appropriate fora, the drafting, adoption,***
19 ***and implementation of an effective inter-***
20 ***national agreement requiring—***
21 ***(A) the establishment of a system***
22 ***to share information on lost, stolen,***
23 ***and fraudulent passports and other***
24 ***travel documents for the purposes of***
25 ***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 ob-

tain 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 trans-

lation 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 tech-

1 *nology employed for the entry and exit*
2 *data system; and*
3 *(D) a description of plans for im-*
4 *proved or added interoperability with*
5 *any other databases or data systems.*
6 *(c) INTEGRATION REQUIREMENT.—Not later*
7 *than 2 years after the date of the enactment of*
8 *this Act, the Secretary shall integrate the bio-*
9 *metric entry and exit data system with all*
10 *databases and data systems maintained by the*
11 *United States Citizenship and Immigration*
12 *Services that process or contain information*
13 *on aliens.*
14 *(d) MAINTAINING ACCURACY AND INTEGRITY*
15 *OF ENTRY AND EXIT DATA SYSTEM.—*
16 *(1) IN GENERAL.—The Secretary, in*
17 *consultation with other appropriate agen-*
18 *cies, shall establish rules, guidelines, poli-*
19 *cies, and operating and auditing proce-*
20 *dures for collecting, removing, and updat-*
21 *ing data maintained in, and adding in-*
22 *formation to, the entry and exit data sys-*
23 *tem, and databases and data systems*
24 *linked to the entry and exit data system,*

1 *that ensure the accuracy and integrity of*
2 *the data.*
3 *(2) REQUIREMENTS.—The rules, guide-*
4 *lines, policies, and procedures established*
5 *under paragraph (1) shall—*
6 *(A) incorporate a simple and time-*
7 *ly method for—*
8 *(i) correcting errors; and*
9 *(ii) clarifying information*
10 *known to cause false hits or*
11 *misidentification errors; and*
12 *(B) include procedures for individ-*
13 *uals to seek corrections of data con-*
14 *tained in the data systems.*
15 *(e) EXPEDITING REGISTERED TRAVELERS*
16 *ACROSS INTERNATIONAL BORDERS.—*
17 *(1) FINDINGS.—Consistent with the re-*
18 *port of the National Commission on Ter-*
19 *rorist Attacks Upon the United States,*
20 *Congress finds that—*
21 *(A) expediting the travel of pre-*
22 *viously screened and known travelers*
23 *across the borders of the United States*
24 *should be a high priority; and*

1 *(B) the process of expediting*
2 *known travelers across the border can*
3 *permit inspectors to better focus on*
4 *identifying terrorists attempting to*
5 *enter the United States.*
6 *(2) DEFINITION.—The term "registered*
7 *traveler program" means any program de-*
8 *signed to expedite the travel of previously*
9 *screened and known travelers across the*
10 *borders of the United States.*
11 *(3) REGISTERED TRAVEL PLAN.—*
12 *(A) IN GENERAL.—As soon as is*
13 *practicable, the Secretary shall de-*
14 *velop and implement a plan to expe-*
15 *dite the processing of registered trav-*
16 *elers who enter and exit the United*
17 *States through a single registered*
18 *traveler program.*
19 *(B) INTEGRATION.—The registered*
20 *traveler program developed under this*
21 *paragraph shall be integrated into*
22 *the automated biometric entry and*
23 *exit data system described in this sec-*
24 *tion.*

(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 imple-

1 *mentation of the plan required by this*
2 *subsection.*
3 *(f) AUTHORIZATION OF APPROPRIATIONS.—*
4 *There are authorized to be appropriated to the*
5 *Secretary, for each of the fiscal years 2005*
6 *through 2009, such sums as may be necessary*
7 *to carry out the provisions of this section.*
8 *SEC. 3091. ENHANCED RESPONSIBILITIES OF THE COORDI-*
9 *NATOR FOR counterterrorism.*
10 *(a) DECLARATION OF UNITED STATES POL-*
11 *ICY.—Congress declares that it shall be the pol-*
12 *icy of the United States to—*
13 *(1) make combating terrorist travel*
14 *and those who assist them a priority for*
15 *the United States counterterrorism policy;*
16 *and*
17 *(2) ensure that the information relat-*
18 *ing to individuals who help facilitate ter-*
19 *rorist travel by creating false passports,*
20 *visas, documents used to obtain such trav-*
21 *el documents, and other documents are*
22 *fully shared within the United States Gov-*
23 *ernment and, to the extent possible, with*
24 *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. 3092. 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.

1 *(c) DUTIES.—*

2 *(1) PREPARATION OF STRATEGIC PLAN.—*

3 *(A) IN GENERAL.—The Deputy As-*
4 *sistant Secretary, in coordination*
5 *with the appropriate officials of the*
6 *Department of Homeland Security,*
7 *shall ensure the preparation of a stra-*
8 *tegic plan to target and disrupt indi-*
9 *viduals and organizations at home*
10 *and in foreign countries that are in-*
11 *volved in the fraudulent production,*
12 *distribution, use, or other similar ac-*
13 *tivity—*

14 *(i) of a United States visa or*
15 *United States passport;*

16 *(ii) of documents intended to*
17 *help fraudulently procure a*
18 *United States visa or United*
19 *States passport, or other docu-*
20 *ments intended to gain unlawful*
21 *entry into the United States; or*

22 *(iii) of passports and visas*
23 *issued by foreign countries in-*
24 *tended to gain unlawful entry into*
25 *the United States.*

1 *(B) EMPHASIS.—Such plan shall—*
2 *(i) focus particular emphasis*
3 *on individuals and organizations*
4 *that may have links to domestic*
5 *terrorist organizations or foreign*
6 *terrorist organizations (as such*
7 *term is defined in Section 219 of*
8 *the Immigration and Nationality*
9 *Act (8 U.S.C. 1189));*
10 *(ii) require the development of*
11 *a strategic training course under*
12 *the Antiterrorism Assistance*
13 *Training (ATA) program of the*
14 *Department of State (or any suc-*
15 *cessor or related program) under*
16 *chapter 8 of part II of the Foreign*
17 *Assistance Act of 1961 (22 U.S.C.*
18 *2349aa et seq.) (or other relevant*
19 *provisions of law) to train partici-*
20 *pants in the identification of*
21 *fraudulent documents and the fo-*
22 *rensic detection of such docu-*
23 *ments which may be used to ob-*
24 *tain unlawful entry into the*
25 *United States; and*

1 *(iii) determine the benefits*
2 *and costs of providing technical*
3 *assistance to foreign governments*
4 *to ensure the security of passports,*
5 *visas, and related documents and*
6 *to investigate, arrest, and pros-*
7 *ecute individuals who facilitate*
8 *travel by the creation of false*
9 *passports and visas, documents to*
10 *obtain such passports and visas,*
11 *and other types of travel docu-*
12 *ments.*
13 *(2) DUTIES OF OFFICE.—The Office*
14 *shall have the following duties:*
15 *(A) ANALYSIS OF METHODS.—Ana-*
16 *lyze methods used by terrorists to trav-*
17 *el internationally, particularly the*
18 *use of false or altered travel docu-*
19 *ments to illegally enter foreign coun-*
20 *tries and the United States, and ad-*
21 *vise the Bureau of Consular Affairs on*
22 *changes to the visa issuance process*
23 *that could combat such methods, in-*
24 *cluding the introduction of new tech-*
25 *nologies into such process.*

1 ***(B) IDENTIFICATION OF INDIVIDUALS***
2 ***AND DOCUMENTS.—Identify, in coopera-***
3 ***tion with the Human Trafficking and***
4 ***Smuggling Center, individuals who***
5 ***facilitate travel by the creation of***
6 ***false passports and visas, documents***
7 ***used to obtain such passports and***
8 ***visas, and other types of travel docu-***
9 ***ments, and ensure that the appro-***
10 ***priate agency is notified for further***
11 ***investigation and prosecution or, in***
12 ***the case of such individuals abroad***
13 ***for which no further investigation or***
14 ***prosecution is initiated, ensure that***
15 ***all appropriate information is shared***
16 ***with foreign governments in order to***
17 ***facilitate investigation, arrest, and***
18 ***prosecution of such individuals.***
19 ***(C) IDENTIFICATION OF FOREIGN***
20 ***COUNTRIES NEEDING ASSISTANCE.—Iden-***
21 ***tify foreign countries that need tech-***
22 ***nical assistance, such as law reform,***
23 ***administrative reform, prosecutorial***
24 ***training, or assistance to police and***
25 ***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, rel-

evant 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 iden-

tify 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 Sec-

retary" 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

1 *(4) to work in bilateral and multilat-*
2 *eral fora to prevent foreign countries from*
3 *being used as terrorist sanctuaries.*

4 *SEC. 4002. REPORTS ON TERRORIST SANCTUARIES.*

5 *(a) INITIAL REPORT.—*

6 *(1) IN GENERAL.—Not later than 90*
7 *days after the date of the enactment of*
8 *this Act, the President shall transmit to*
9 *Congress a report that describes a strat-*
10 *egy for addressing and, where possible,*
11 *eliminating terrorist sanctuaries.*

12 *(2) CONTENT.—The report required*
13 *under this subsection shall include the*
14 *following:*

15 *(A) A list that prioritizes each ac-*
16 *tual and potential terrorist sanctuary*
17 *and a description of activities in the*
18 *actual and potential sanctuaries.*

19 *(B) An outline of strategies for*
20 *preventing the use of, disrupting, or*
21 *ending the use of such sanctuaries.*

22 *(C) A detailed description of ef-*
23 *forts, including an assessment of suc-*
24 *cesses and setbacks, by the United*
25 *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 *(1) INTERIM REPORT.—Not later than*
2 *June 15, 2005, the Advisory Board shall*
3 *prepare and submit to the Undersecretary*
4 *of State for Arms Control and Inter-*
5 *national Security an interim report that*
6 *contains the initial results of the review*
7 *carried out pursuant to subsection (a).*
8 *(2) FINAL REPORT.—Not later than De-*
9 *cember 1, 2005, the Advisory Board shall*
10 *prepare and submit to the Undersecretary*
11 *of State for Arms Control and Inter-*
12 *national Security, and to the Committee*
13 *on International Relations of the House of*
14 *Representatives and the Committee on*
15 *Foreign Relations of the Senate, a final*
16 *report that contains the comprehensive re-*
17 *sults of the review carried out pursuant to*
18 *subsection (a).*
19 *(c) EXPERTS AND CONSULTANTS.—In car-*
20 *rying out this section, the Advisory Board may*
21 *procure temporary and intermittent services of*
22 *experts and consultants, including experts*
23 *and consultants from nongovernmental orga-*
24 *nizations, under section 3109(b) of title 5,*
25 *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 agree-

ment 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 pro-

visions 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 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

1 ***Secretary shall submit the assessment re-***
2 ***quired by this subsection.***
3 ***(b) FURTHER ACTION.— On the basis of such***
4 ***review, the Secretary, in coordination with all***
5 ***appropriate Federal agencies, shall submit, as***
6 ***part of the annual budget submission, a public***
7 ***diplomacy strategy plan which specifies goals,***
8 ***agency responsibilities, and necessary re-***
9 ***sources and mechanisms for achieving such***
10 ***goals during the next fiscal year. The plan***
11 ***may be submitted in classified form.***
12 ***SEC. 4022. PUBLIC DIPLOMACY TRAINING.***
13 ***(a) STATEMENT OF POLICY.—It should be the***
14 ***policy of the United States:***
15 ***(1) The Foreign Service should recruit***
16 ***individuals with expertise and profes-***
17 ***sional experience in public diplomacy.***
18 ***(2) United States chiefs of mission***
19 ***should have a prominent role in the for-***
20 ***mulation of public diplomacy strategies***
21 ***for the countries and regions to which***
22 ***they are assigned and should be account-***
23 ***able for the operation and success of pub-***
24 ***lic diplomacy efforts at their posts.***

1 *(3) Initial and subsequent training of*
2 *Foreign Service officers should be en-*
3 *hanced to include information and train-*
4 *ing on public diplomacy and the tools and*
5 *technology of mass communication.*
6 *(b) PERSONNEL.—*
7 *(1) QUALIFICATIONS.—In the recruit-*
8 *ment, training, and assignment of mem-*
9 *bers of the Foreign Service, the Secretary*
10 *of State shall emphasize the importance*
11 *of public diplomacy and applicable skills*
12 *and techniques. The Secretary shall con-*
13 *sider the priority recruitment into the*
14 *Foreign Service, at middle-level entry, of*
15 *individuals with expertise and profes-*
16 *sional experience in public diplomacy,*
17 *mass communications, or journalism. The*
18 *Secretary shall give special consideration*
19 *to individuals with language facility and*
20 *experience in particular countries and re-*
21 *gions.*
22 *(2) LANGUAGES OF SPECIAL INTEREST.—*
23 *The Secretary of State shall seek to in-*
24 *crease the number of Foreign Service offi-*
25 *cers proficient in languages spoken in*

1 *predominantly Muslim countries. Such in-*
2 *crease shall be accomplished through the*
3 *recruitment of new officers and incentives*
4 *for officers in service.*

5 *SEC. 4023. PROMOTING DIRECT EXCHANGES WITH MUSLIM*
6 *COUNTRIES.*

7 *(a) DECLARATION OF POLICY.—Congress de-*
8 *clares that the United States should commit to*
9 *a long-term and sustainable investment in*
10 *promoting engagement with people of all lev-*
11 *els of society in countries with predominantly*
12 *Muslim populations, particularly with youth*
13 *and those who influence youth. Such an invest-*
14 *ment should make use of the talents and re-*
15 *sources in the private sector and should in-*
16 *clude programs to increase the number of peo-*
17 *ple who can be exposed to the United States*
18 *and its fundamental ideas and values in order*
19 *to dispel misconceptions. Such programs*
20 *should include youth exchange programs,*
21 *young ambassadors programs, international*
22 *visitor programs, academic and cultural ex-*
23 *change programs, American Corner programs,*
24 *library programs, journalist exchange pro-*

1 ***grams, sister city programs, and other pro-***
2 ***grams related to people-to-people diplomacy.***
3 ***(b) SENSE OF CONGRESS.—It is the sense of***
4 ***Congress that the United States should signifi-***
5 ***cantly increase its investment in the people-to-***
6 ***people programs described in subsection (a).***
7 ***SEC. 4024. PUBLIC DIPLOMACY REQUIRED FOR PROMOTION***
8 ***IN FOREIGN SERVICE.***
9 ***(a) IN GENERAL.—Section 603(b) of the For-***
10 ***eign Service Act of 1980 (22 U.S.C. 4003(b)) is***
11 ***amended by adding at the end the following***
12 ***new sentences: "The precepts for such selection***
13 ***boards shall also consider whether the mem-***
14 ***ber of the Service or the member of the Senior***
15 ***Foreign Service, as the case may be, has served***
16 ***in at least one position in which the primary***
17 ***responsibility of such member was related to***
18 ***public diplomacy. A member may not be pro-***
19 ***moted into or within the Senior Foreign Serv-***
20 ***ice if such member has not served in at least***
21 ***one such position.".***
22 ***(b) EFFECTIVE DATE.—The amendment***
23 ***made by subsection (a) shall take effect on***
24 ***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, the relevant United States chiefs of mission, and, where appropriate, the Secretary of the Treasury, 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 Na-

tions 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 conduct 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 rep-

resenting 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.

1 *(c) STAFFING.—The Special Representative*
2 *shall have a staff of Foreign Service and civil*
3 *service officers skilled in multilateral diplo-*
4 *macy.*
5 *(d) DUTIES.—The Special Representative*
6 *shall have the following responsibilities:*
7 *(1) IN GENERAL.—The primary respon-*
8 *sibility of the Special Representative shall*
9 *be to assist in the organization of, and*
10 *preparation for, United States participa-*
11 *tion in multilateral negotiations, includ-*
12 *ing advocacy efforts undertaken by the*
13 *Department of State and other United*
14 *States Government agencies.*
15 *(2) CONSULTATIONS.—The Special Rep-*
16 *resentative shall consult with Congress,*
17 *international organizations, nongovern-*
18 *mental organizations, and the private sec-*
19 *tor on matters affecting multilateral ne-*
20 *gotiations.*
21 *(3) ADVISORY ROLE.—The Special Rep-*
22 *resentative shall advise the Assistant Sec-*
23 *retary for International Organizational*
24 *Affairs and, as appropriate, the Secretary*
25 *of State, regarding advocacy at inter-*

national 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 for-

eign 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.

1 *(7) COORDINATION WITH THE DEPART-*
2 *MENT OF THE TREASURY.—*
3 *(A) COORDINATION AND CONSULTA-*
4 *TION.—The Special Representative*
5 *shall coordinate and consult with the*
6 *relevant staff at the Department of the*
7 *Treasury in order to prepare rec-*
8 *ommendations for the Secretary of*
9 *State regarding multilateral negotia-*
10 *tions involving international finan-*
11 *cial institutions and other multilat-*
12 *eral financial policymaking bodies.*
13 *(B) NEGOTIATING AUTHORITY CLARI-*
14 *FIED.—Notwithstanding any other pro-*
15 *vision of law, the Secretary of the*
16 *Treasury shall remain the lead rep-*
17 *resentative and lead negotiator for*
18 *the United States within the inter-*
19 *national financial institutions and*
20 *other multilateral financial policy-*
21 *making bodies.*
22 *(C) DEFINITIONS.—In this para-*
23 *graph:*
24 *(i) INTERNATIONAL FINANCIAL*
25 *INSTITUTIONS.—The term "inter-*

national financial institutions" has the meaning given in section 1701(c)(2) of the International Financial Institutions Act.

(ii) OTHER MULTILATERAL FINANCIAL POLICYMAKING BODIES.—The term "other multilateral financial policymaking bodies" means—

(I) the Financial Action Task Force at the Organization for Economic Cooperation and Development;

(II) the international network of financial intelligence units known as the "Egmont Group";

(III) the United States, Canada, the United Kingdom, France, Germany, Italy, Japan, and Russia, when meeting as the Group of Eight; and

(IV) any other multilateral financial policymaking group

in which the Secretary of the Treasury represents the United States.

(iii) FINANCIAL ACTION TASK FORCE.—The term "Financial Action Task Force" means the international grouping of countries that meets periodically to address issues related to money laundering, terrorist financing, and other financial crimes.

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

1 ***the Office of Overseas Schools of the Depart-***
2 ***ment of State, may conduct a pilot program to***
3 ***make grants to American-sponsored elemen-***
4 ***tary and secondary schools in predominantly***
5 ***Muslim countries for the purpose of providing***
6 ***full or partial merit-based scholarships to stu-***
7 ***dents from lower- and middle-income families***
8 ***of such countries to attend such schools.***

9 ***(d) DETERMINATION OF ELIGIBLE STU-***
10 ***DENTS.—For purposes of expending grant***
11 ***funds, an American-sponsored elementary and***
12 ***secondary school that receives a grant under***
13 ***subsection (c) is authorized to establish cri-***
14 ***teria to be implemented by such school to de-***
15 ***termine what constitutes lower- and middle-***
16 ***income families in the country (or region of the***
17 ***country, if regional variations in income levels***
18 ***in the country are significant) in which such***
19 ***school is located.***

20 ***(e) RESTRICTION ON USE OF FUNDS.—***
21 ***Amounts appropriated to the Secretary of***
22 ***State pursuant to the authorization of appro-***
23 ***priations in subsection (h) shall be used for***
24 ***the sole purpose of making grants under this***
25 ***section, and may not be used for the adminis-***

1 ***tration of the Office of Overseas Schools of the***
2 ***Department of State or for any other activity***
3 ***of the Office.***
4 ***(f) VOLUNTARY PARTICIPATION.—Nothing in***
5 ***this section shall be construed to require par-***
6 ***ticipation in the pilot program by an Amer-***
7 ***ican-sponsored elementary or secondary***
8 ***school in a predominantly Muslim country.***
9 ***(g) REPORT.—Not later than April 15, 2006,***
10 ***the Secretary shall submit to the Committee on***
11 ***International Relations of the House of Rep-***
12 ***resentatives and the Committee on Foreign Re-***
13 ***lations of the Senate a report on the pilot pro-***
14 ***gram. The report shall assess the success of the***
15 ***program, examine any obstacles encountered***
16 ***in its implementation, and address whether it***
17 ***should be continued, and if so, provide rec-***
18 ***ommendations to increase its effectiveness.***
19 ***(h) FUNDING.—There are authorized to be***
20 ***appropriated to the Secretary of State such***
21 ***sums as may be necessary for each of fiscal***
22 ***years 2005, 2006, and 2007 to carry out this sec-***
23 ***tion.***

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).

1 *(2) PURPOSE.—The purpose of the net-*
2 *work shall be to provide an effective*
3 *forum to convene a broad range of indi-*
4 *viduals, organizations, and governmental*
5 *participants involved in journalistic ac-*
6 *tivities and the development of free and*
7 *independent media to—*
8 *(A) fund a clearinghouse to collect*
9 *and share information concerning*
10 *international media development and*
11 *training;*
12 *(B) improve research in the field*
13 *of media assistance and program*
14 *evaluation to better inform decisions*
15 *regarding funding and program de-*
16 *sign for government and private do-*
17 *nors;*
18 *(C) explore the most appropriate*
19 *use of existing means to more effec-*
20 *tively encourage the involvement of*
21 *the private sector in the field of media*
22 *assistance; and*
23 *(D) identify effective methods for*
24 *the development of a free and inde-*

1 *pendent media in societies in transi-*
2 *tion.*
3 *(3) FUNDING.—For grants made by the*
4 *Department of State to NED as authorized*
5 *by the National Endowment for Democ-*
6 *racy Act (Public Law 98–164, 97 Stat.*
7 *1039), there are authorized to be appro-*
8 *priated to the Secretary of State such*
9 *sums as may be necessary for each of fis-*
10 *cal years 2005, 2006, and 2007 to carry out*
11 *this section.*

12 *SEC. 4043. COMBATING BIASED OR FALSE FOREIGN MEDIA*
13 *COVERAGE OF THE UNITED STATES.*

14 *(a) FINDINGS.—Congress finds the fol-*
15 *lowing:*
16 *(1) Biased or false media coverage of*
17 *the United States and its allies is a sig-*
18 *nificant factor encouraging terrorist acts*
19 *against the people of the United States.*
20 *(2) Public diplomacy efforts designed*
21 *to encourage an accurate understanding*
22 *of the people of the United States and the*
23 *policies of the United States are unlikely*
24 *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 ter-

rorism 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 coun-

tries 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 deter-

mination 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 revoca-

tion. 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 designa-

tion 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 redes-

ignation 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 For-

eign 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 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. The coordinator designated under subsection (a) shall work through the Secretary of the Treasury and the United States Executive Directors at the international financial institutions in order to effectuate these responsibilities within the international financial institutions. The term 'international financial institution' has the meaning given in section 1701(c)(2) of the International Financial Institutions Act.".

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, counter-narcotics, 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 non-lethal 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—

1 *(A) the item relating to title III as*
2 *the item relating to title IV; and*
3 *(B) the items relating to sections*
4 *301 through 304 as the items relating*
5 *to sections 401 through 404; and*
6 *(2) by inserting after the items relat-*
7 *ing to title II the following:*

"TITLE III—PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN

"Sec. 301. Assistance for counternarcotics efforts.".

8 *SEC. 4069. ADDITIONAL AMENDMENTS TO THE AFGHANI-*
9 *STAN FREEDOM SUPPORT ACT OF 2002.*

10 *(a) TECHNICAL AMENDMENT.—Section*
11 *103(a)(7)(A)(xii) of the Afghanistan Freedom*
12 *Support Act of 2002 (22 U.S.C.*
13 *7513(a)(7)(A)(xii)) is amended by striking "Na-*
14 *tional" and inserting "Afghan Independent".*
15 *(b) REPORTING REQUIREMENT.—Section*
16 *206(c)(2) of such Act (22 U.S.C. 7536(c)(2)) is*
17 *amended in the matter preceding subpara-*
18 *graph (A) by striking "2007" and inserting*
19 *"2012".*

20 *SEC. 4070. REPEAL.*

21 *Section 620D of the Foreign Assistance Act*
22 *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 (com-

monly 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 ac-

tivities 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 Implemen-

tation 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 NON-PROLIFERATION 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 de-

fend 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) FINDINGS.—The Congress finds as follows:

(1) The global war on terrorism and cutting off terrorist financing is a policy priority for the United States and its partners, working bilaterally and multilaterally through the United Nations (UN), the UN Security Council and its Committees, such as the 1267 and 1373 Committees, the Financial Action Task Force (FATF) and various international financial institutions, such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and the regional multilateral development banks, and other multilateral fora.

(2) The Secretary of the Treasury has engaged the international financial community in the global fight against ter-

rorist financing. Specifically, the Department of the Treasury helped redirect the focus of the Financial Action Task Force on the new threat posed by terrorist financing to the international financial system, resulting in the establishment of the FATF's Eight Special Recommendations on Terrorist Financing as the international standard on combating terrorist financing. The Secretary of the Treasury has engaged the Group of Seven and the Group of Twenty Finance Ministers to develop action plans to curb the financing of terror. In addition, other economic and regional fora, such as the Asia-Pacific Economic Cooperation (APEC) Forum, the Western Hemisphere Financial Ministers, have been used to marshal political will and actions in support of countering the financing of terrorism (CFT) standards.

(3) FATF's Forty Recommendations on Money Laundering and the Eight Special Recommendations on Terrorist Financing are the recognized global standards for fighting money laundering and terrorist

financing. The FATF has engaged in an assessment process for jurisdictions based on their compliance with these standards.

(4) In March 2004, the IMF and IBRD Boards agreed to make permanent a pilot program of collaboration with the FATF to assess global compliance with the FATF Forty Recommendations on Money Laundering and the Eight Special Recommendations on Terrorist Financing. As a result, anti-money laundering (AML) and combating the financing of terrorism (CFT) assessments are now a regular part of their Financial Sector Assessment Progam (FSAP) and Offshore Financial Center assessments, which provide for a comprehensive analysis of the strength of a jurisdiction's financial system. These reviews assess potential systemic vulnerabilities, consider sectoral development needs and priorities, and review the state of implementation of and compliance with key financial codes and regulatory standards, among them the AML and CFT standards.

(5) To date, 70 FSAPs have been conducted, with over 24 of those incorporating AML and CFT assessments. The international financial institutions (IFIs), the FATF, and the FATF-style regional bodies together are expected to assess AML and CFT regimes in up to 40 countries or jurisdictions per year. This will help countries and jurisdictions identify deficiencies in their AML and CFT regimes and help focus technical assistance (TA) efforts.

(6) TA programs from the United States and other nations, coordinated with the Department of State and other departments and agencies, are playing an important role in helping countries and jurisdictions address shortcomings in their AML and CFT regimes and bringing their regimes into conformity with international standards. Training is coordinated within the United States Government, which leverages multilateral organizations and bodies and international fi-

nancial institutions to internationalize the conveyance of technical assistance.

(7) In fulfilling its duties in advancing incorporation of AML and CFT standards into the IFIs as part of the IFIs' work on protecting the integrity of the international monetary system, the Department of the Treasury, under the guidance of the Secretary of the Treasury, has effectively brought together all of the key United States Government agencies. In particular, United States Government agencies continue to work together to foster broad support for this important undertaking in various multilateral fora, and United States Government agencies recognize the need for close coordination and communication within our own government.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Secretary of the Treasury should continue to promote the dissemination of international AML and CFT standards, and to press for full implementation of the FATF 40 + 8 Recommendations by all countries

in order to curb financial risks and hinder terrorist financing around the globe.

SEC. 4112. EXPANDED REPORTING AND TESTIMONY REQUIREMENTS FOR THE SECRETARY OF THE TREASURY.

(a) REPORTING REQUIREMENTS.—Section 1503(a) of the International Financial Institutions Act (22 U.S.C. 262o–2(a)) is amended by adding at the end the following new paragraph:

"(15) Work with the International Monetary Fund to—

"(A) foster strong global anti-money laundering (AML) and combat the financing of terrorism (CFT) regimes;

"(B) ensure that country performance under the Financial Action Task Force anti-money laundering and counter-terrorist financing standards is effectively and comprehensively monitored;

"(C) ensure note is taken of AML and CFT issues in Article IV reports, International Monetary Fund pro-

grams, and other regular reviews of country progress;

"(D) ensure that effective AML and CFT regimes are considered to be indispensable elements of sound financial systems; and

"(E) emphasize the importance of sound AML and CFT regimes to global growth and development.".

(b) TESTIMONY.—Section 1705(b) of such Act (22 U.S.C. 262r–4(b)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and" and

(3) by adding at the end the following:

"(4) the status of implementation of international anti-money laundering and counter-terrorist financing standards by the International Monetary Fund, the multilateral development banks, and other multilateral financial policymaking bodies.".

1 *SEC. 4113. COORDINATION OF UNITED STATES GOVERN-*
2 *MENT EFFORTS.*

3 ***The Secretary of the Treasury, or the des-***
4 ***ignee of the Secretary as the lead United***
5 ***States Government official to the Financial***
6 ***Action Task Force (FATF), shall continue to***
7 ***convene the interagency United States Govern-***
8 ***ment FATF working group. This group, which***
9 ***includes representatives from all relevant fed-***
10 ***eral agencies, shall meet at least once a year***
11 ***to advise the Secretary on policies to be pur-***
12 ***sued by the United States regarding the devel-***
13 ***opment of common international AML and***
14 ***CFT standards, to assess the adequacy and im-***
15 ***plementation of such standards, and to rec-***
16 ***ommend to the Secretary improved or new***
17 ***standards as necessary.***

18 *SEC. 4114. DEFINITIONS.*

19 ***In this subtitle:***

20 ***(1) INTERNATIONAL FINANCIAL INSTITU-***
21 ***TIONS.—The term "international financial***
22 ***institutions" has the meaning given in***
23 ***section 1701(c)(2) of the International Fi-***
24 ***nancial Institutions Act.***

25 ***(2) FINANCIAL ACTION TASK FORCE.—***
26 ***The term "Financial Action Task Force"***

means the international policy-making and standard-setting body dedicated to combating money laundering and terrorist financing that was created by the Group of Seven in 1989.

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 Na-

1 ***tion's first response teams quickly enough,***
2 ***and sometimes not at all.***
3 ***(3) To reform the current bureau-***
4 ***cratic process so that homeland security***
5 ***dollars reach the first responders who***
6 ***need it most, it is necessary to clarify and***
7 ***consolidate the authority and procedures***
8 ***of the Department of Homeland Security***
9 ***that support first responders.***
10 ***(4) Ensuring adequate resources for***
11 ***the new national mission of homeland se-***
12 ***curity, without degrading the ability to***
13 ***address effectively other types of major***
14 ***disasters and emergencies, requires a dis-***
15 ***crete and separate grant making process***
16 ***for homeland security funds for first re-***
17 ***sponse to terrorist acts, on the one hand,***
18 ***and for first responder programs designed***
19 ***to meet pre-September 11 priorities, on the***
20 ***other.***
21 ***(5) While a discrete homeland security***
22 ***grant making process is necessary to en-***
23 ***sure proper focus on the unique aspects of***
24 ***terrorism prevention, preparedness, and***
25 ***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 organiza-

tions, 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 Dis-

aster 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 Sec-

retary 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

1 *State and local government preparedness*
2 *for terrorism, in consultation with—*
3 *"(A) the Task Force on Essential*
4 *Capabilities for First Responders es-*
5 *tablished under section 1804;*
6 *"(B) the Under Secretaries for*
7 *Emergency Preparedness and Re-*
8 *sponse, Border and Transportation*
9 *Security, Information Analysis and In-*
10 *frastructure Protection, and Science*
11 *and Technology, and the Director of*
12 *the Office for Domestic Preparedness;*
13 *"(C) the Secretary of Health and*
14 *Human Services;*
15 *"(D) other appropriate Federal*
16 *agencies;*
17 *"(E) State and local first re-*
18 *sponder agencies and officials; and*
19 *"(F) consensus-based standard*
20 *making organizations responsible for*
21 *setting standards relevant to the first*
22 *responder community.*
23 *"(2) DEADLINES.—The Secretary*
24 *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 pos-

sess, 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.

1 *"(2) CRITICAL INFRASTRUCTURE SEC-*
2 *TORS.—The Secretary specifically shall*
3 *consider threats of terrorism against the*
4 *following critical infrastructure sectors in*
5 *all areas of the Nation, urban and rural:*
6 *"(A) Agriculture.*
7 *"(B) Banking and finance.*
8 *"(C) Chemical industries.*
9 *"(D) The defense industrial base.*
10 *"(E) Emergency services.*
11 *"(F) Energy.*
12 *"(G) Food.*
13 *"(H) Government.*
14 *"(I) Postal and shipping.*
15 *"(J) Public health.*
16 *"(K) Information and tele-*
17 *communications networks.*
18 *"(L) Transportation.*
19 *"(M) Water.*
20 *The order in which the critical infrastruc-*
21 *ture sectors are listed in this paragraph*
22 *shall not be construed as an order of pri-*
23 *ority for consideration of the importance*
24 *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 Sec-

retary 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—

1 *"(A) include a priority ranking of*
2 *essential capabilities in order to pro-*
3 *vide guidance to the Secretary and to*
4 *the Congress on determining the ap-*
5 *propriate allocation of, and funding*
6 *levels for, first responder needs;*
7 *"(B) set forth a methodology by*
8 *which any State or local government*
9 *will be able to determine the extent to*
10 *which it possesses or has access to the*
11 *essential capabilities that States and*
12 *local governments having similar*
13 *risks should obtain;*
14 *"(C) describe the availability of*
15 *national voluntary consensus stand-*
16 *ards, and whether there is a need for*
17 *new national voluntary consensus*
18 *standards, with respect to first re-*
19 *sponder training and equipment;*
20 *"(D) include such additional mat-*
21 *ters as the Secretary may specify in*
22 *order to further the terrorism pre-*
23 *paredness capabilities of first re-*
24 *sponders; and*

1 *"(E) include such revisions to the*
2 *contents of past reports as are nec-*
3 *essary to take into account changes in*
4 *the most current risk assessment*
5 *available by the Directorate for Infor-*
6 *mation Analysis and Infrastructure*
7 *Protection or other relevant informa-*
8 *tion as determined by the Secretary.*
9 *"(3) CONSISTENCY WITH FEDERAL WORK-*
10 *ING GROUP.—The Task Force shall ensure*
11 *that its recommendations for essential ca-*
12 *pabilities are, to the extent feasible, con-*
13 *sistent with any preparedness goals or*
14 *recommendations of the Federal working*
15 *group established under section 319F(a)*
16 *of the Public Health Service Act (42 U.S.C.*
17 *247d–6(a)).*
18 *"(4) COMPREHENSIVENESS.—The Task*
19 *Force shall ensure that its recommenda-*
20 *tions regarding essential capabilities for*
21 *terrorism preparedness are made within*
22 *the context of a comprehensive State*
23 *emergency management system.*
24 *"(5) PRIOR MEASURES.—The Task Force*
25 *shall ensure that its recommendations re-*

garding 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);

1 *"(B) health scientists, emergency*
2 *and inpatient medical providers, and*
3 *public health professionals, including*
4 *experts in emergency health care re-*
5 *sponse to chemical, biological, radio-*
6 *logical, and nuclear terrorism, and*
7 *experts in providing mental health*
8 *care during emergency response oper-*
9 *ations;*
10 *"(C) experts from Federal, State,*
11 *and local governments, and the pri-*
12 *vate sector, representing standards-*
13 *setting organizations, including rep-*
14 *resentation from the voluntary con-*
15 *sensus codes and standards develop-*
16 *ment community, particularly those*
17 *with expertise in first responder dis-*
18 *ciplines; and*
19 *"(D) State and local officials with*
20 *expertise in terrorism preparedness,*
21 *subject to the condition that if any*
22 *such official is an elected official rep-*
23 *resenting one of the two major polit-*
24 *ical parties, an equal number of elect-*

1 *ed officials shall be selected from each*
2 *such party.*
3 *"(2) COORDINATION WITH THE DEPART-*
4 *MENT OF HEALTH AND HEALTH SERVICES.—In*
5 *the selection of members of the Task Force*
6 *who are health professionals, including*
7 *emergency medical professionals, the Sec-*
8 *retary shall coordinate the selection with*
9 *the Secretary of Health and Human Serv-*
10 *ices.*
11 *"(3) EX OFFICIO MEMBERS.—The Sec-*
12 *retary and the Secretary of Health and*
13 *Human Services shall each designate one*
14 *or more officers of their respective Depart-*
15 *ments to serve as ex officio members of the*
16 *Task Force. One of the ex officio members*
17 *from the Department of Homeland Secu-*
18 *rity shall be the designated officer of the*
19 *Federal Government for purposes of sub-*
20 *section (e) of section 10 of the Federal Ad-*
21 *visory Committee Act (5 App. U.S.C.).*
22 *"(d) APPLICABILITY OF FEDERAL ADVISORY*
23 *COMMITTEE ACT.—Notwithstanding section*
24 *871(a), the Federal Advisory Committee Act (5*
25 *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 plan-

ning 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.

1 *"(4) MINIMUM CONTENTS OF APPLICA-*
2 *TION.—The Secretary shall require that*
3 *each applicant include in its application,*
4 *at a minimum—*
5 *"(A) the purpose for which the ap-*
6 *plicant seeks covered grant funds and*
7 *the reasons why the applicant needs*
8 *the covered grant to meet the essential*
9 *capabilities for terrorism prepared-*
10 *ness within the State, region, or di-*
11 *rectly eligible tribe to which the appli-*
12 *cation pertains;*
13 *"(B) a description of how, by ref-*
14 *erence to the applicable State home-*
15 *land security plan or plans under sub-*
16 *section (c), the allocation of grant*
17 *funding proposed in the application,*
18 *including, where applicable, the*
19 *amount not passed through under sec-*
20 *tion 1806(g)(1), would assist in ful-*
21 *filling the essential capabilities speci-*
22 *fied in such plan or plans;*
23 *"(C) a statement of whether a mu-*
24 *tual 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 re-

quired 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

1 *the region's access to covered*
2 *grants; and*
3 *"(iii) administer, in consulta-*
4 *tion with State, local, regional,*
5 *and private officials within the re-*
6 *gion, covered grants awarded to*
7 *the region.*
8 *"(6) TRIBAL APPLICATIONS.—*
9 *"(A) SUBMISSION TO THE STATE OR*
10 *STATES.—To ensure the consistency re-*
11 *quired under subsection (d), an appli-*
12 *cant that is a directly eligible tribe*
13 *must submit its application to each*
14 *State within the boundaries of which*
15 *any part of such tribe is located for*
16 *direct submission to the Department*
17 *along with the application of such*
18 *State or States.*
19 *"(B) OPPORTUNITY FOR STATE COM-*
20 *MENT.—Before awarding any covered*
21 *grant to a directly eligible tribe, the*
22 *Secretary shall provide an oppor-*
23 *tunity to each State within the bound-*
24 *aries of which any part of such tribe*
25 *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;

1 *"(C) the Under Secretary for Bor-*
2 *der and Transportation Security;*
3 *"(D) the Under Secretary for Infor-*
4 *mation Analysis and Infrastructure*
5 *Protection;*
6 *"(E) the Under Secretary for*
7 *Science and Technology; and*
8 *"(F) the Director of the Office for*
9 *Domestic Preparedness.*
10 *"(2) CHAIRMAN.—*
11 *"(A) IN GENERAL.—The Secretary*
12 *shall be the Chairman of the Board.*
13 *"(B) EXERCISE OF AUTHORITIES BY*
14 *DEPUTY SECRETARY.—The Deputy Sec-*
15 *retary of Homeland Security may exer-*
16 *cise the authorities of the Chairman,*
17 *if the Secretary so directs.*
18 *"(3) RANKING OF GRANT APPLICATIONS.—*
19 *"(A) PRIORITIZATION OF GRANTS.—*
20 *The Board—*
21 *"(i) shall evaluate and annu-*
22 *ally prioritize all pending appli-*
23 *cations for covered grants based*
24 *upon the degree to which they*
25 *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.

1 *"SEC. 1806. USE OF FUNDS AND ACCOUNTABILITY REQUIRE-*
2 *MENTS.*
3 *"(a) IN GENERAL.—A covered grant may be*
4 *used for—*
5 *"(1) purchasing or upgrading equip-*
6 *ment, including computer software, to en-*
7 *hance terrorism preparedness and re-*
8 *sponse;*
9 *"(2) exercises to strengthen terrorism*
10 *preparedness and response;*
11 *"(3) training for prevention (includ-*
12 *ing detection) of, preparedness for, or re-*
13 *sponse to attacks involving weapons of*
14 *mass destruction, including training in*
15 *the use of equipment and computer soft-*
16 *ware;*
17 *"(4) developing or updating response*
18 *plans;*
19 *"(5) establishing or enhancing mecha-*
20 *nisms for sharing terrorism threat infor-*
21 *mation;*
22 *"(6) systems architecture and engi-*
23 *neering, program planning and manage-*
24 *ment, strategy formulation and strategic*
25 *planning, life-cycle systems design, prod-*
26 *uct and technology evaluation, and proto-*

type 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; and

"(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;

"(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; and

"(14) 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 en-

1 ***hances first responder preparedness for emer-***
2 ***gencies and disasters unrelated to acts of ter-***
3 ***rorism, if such use assists such governments in***
4 ***achieving essential capabilities for terrorism***
5 ***preparedness established by the Secretary***
6 ***under section 1803.***

7 ***"(d) REIMBURSEMENT OF COSTS.—In addi-***
8 ***tion to the activities described in subsection***
9 ***(a), a covered grant may be used to provide a***
10 ***reasonable stipend to paid-on-call or volunteer***
11 ***first responders who are not otherwise com-***
12 ***pensated for travel to or participation in***
13 ***training covered by this section. Any such re-***
14 ***imbursement shall not be considered com-***
15 ***pensation for purposes of rendering such a***
16 ***first responder an employee under the Fair***
17 ***Labor Standards Act of 1938 (29 U.S.C. 201 et***
18 ***seq.).***

19 ***"(e) ASSISTANCE REQUIREMENT.—The Sec-***
20 ***retary may not request that equipment paid***
21 ***for, wholly or in part, with funds provided as***
22 ***a covered grant be made available for re-***
23 ***sponding to emergencies in surrounding***
24 ***States, regions, and localities, unless the Sec-***
25 ***retary undertakes to pay the costs directly at-***

tributable 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 com-

bination 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 applica-

1 *ble State homeland security plan or*
2 *plans remain unmet.*
3 *"(6) INCLUSION OF RESTRICTED AN-*
4 *NEXES.—A recipient of a covered grant*
5 *may submit to the Secretary an annex to*
6 *the annual report under paragraph (5)*
7 *that is subject to appropriate handling re-*
8 *strictions, if the recipient believes that*
9 *discussion in the report of unmet needs*
10 *would reveal sensitive but unclassified in-*
11 *formation.*
12 *"(7) PROVISION OF REPORTS.—The Sec-*
13 *retary shall ensure that each annual re-*
14 *port under paragraph (5) is provided to*
15 *the Under Secretary for Emergency Pre-*
16 *paredness and Response and the Director*
17 *of the Office for Domestic Preparedness.*
18 *"(h) INCENTIVES TO EFFICIENT ADMINISTRA-*
19 *TION OF HOMELAND SECURITY GRANTS.—*
20 *"(1) PENALTIES FOR DELAY IN PASSING*
21 *THROUGH LOCAL SHARE.—If a recipient of a*
22 *covered grant that is a State fails to pass*
23 *through to local governments, first re-*
24 *sponders, and other local groups funds or*
25 *resources required by subsection (g)(1)*

1 *within 45 days after receiving funds*
2 *under the grant, the Secretary may—*
3 *"(A) reduce grant payments to the*
4 *grant recipient from the portion of*
5 *grant funds that is not required to be*
6 *passed through under subsection*
7 *(g)(1);*
8 *"(B) terminate payment of funds*
9 *under the grant to the recipient, and*
10 *transfer the appropriate portion of*
11 *those funds directly to local first re-*
12 *sponders that were intended to receive*
13 *funding under that grant; or*
14 *"(C) impose additional restric-*
15 *tions or burdens on the recipient's use*
16 *of funds under the grant, which may*
17 *include—*
18 *"(i) prohibiting use of such*
19 *funds to pay the grant recipient's*
20 *grant-related overtime or other ex-*
21 *penses;*
22 *"(ii) requiring the grant re-*
23 *cipient to distribute to local gov-*
24 *ernment beneficiaries all or a por-*
25 *tion 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).

1 *"(B) SHOWING REQUIRED.—To re-*
2 *ceive a payment under this para-*
3 *graph, a local government must dem-*
4 *onstrate that—*
5 *"(i) it is identified explicitly as*
6 *an ultimate recipient or intended*
7 *beneficiary in the approved grant*
8 *application;*
9 *"(ii) it was intended by the*
10 *grantee to receive a severable por-*
11 *tion of the overall grant for a spe-*
12 *cific purpose that is identified in*
13 *the grant application;*
14 *"(iii) it petitioned the grantee*
15 *for the funds or resources after ex-*
16 *piration of the period within*
17 *which the funds or resources were*
18 *required to be passed through*
19 *under subsection (g)(1); and*
20 *"(iv) it did not receive the por-*
21 *tion of the overall grant that was*
22 *earmarked or designated for its*
23 *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

1 *mitigate terrorist threats, including*
2 *threats from chemical, biological, nu-*
3 *clear, and radiological weapons and*
4 *explosive devices capable of inflicting*
5 *significant human casualties; and*
6 *"(B) familiarize first responders*
7 *with the proper use of equipment, in-*
8 *cluding software, developed pursuant*
9 *to the standards established under*
10 *subsection (a).*
11 *"(2) REQUIRED CATEGORIES.—In car-*
12 *rying out paragraph (1), the Secretary*
13 *specifically shall include the following*
14 *categories of first responder activities:*
15 *"(A) Regional planning.*
16 *"(B) Joint exercises.*
17 *"(C) Intelligence collection, anal-*
18 *ysis, and sharing.*
19 *"(D) Emergency notification of af-*
20 *fected populations.*
21 *"(E) Detection of biological, nu-*
22 *clear, radiological, and chemical*
23 *weapons of mass destruction.*
24 *"(F) Such other activities for*
25 *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

1 ***section with the Secretary of Health and***
2 ***Human Services.".***
3 ***(b) DEFINITION OF EMERGENCY RESPONSE***
4 ***PROVIDERS.—Paragraph (6) of section 2 of the***
5 ***Homeland Security Act of 2002 (Public Law***
6 ***107–296; 6 U.S.C. 101(6)) is amended by strik-***
7 ***ing "includes" and all that follows and insert-***
8 ***ing "includes Federal, State, and local govern-***
9 ***mental and nongovernmental emergency pub-***
10 ***lic safety, law enforcement, fire, emergency re-***
11 ***sponse, emergency medical (including hospital***
12 ***emergency facilities), and related personnel,***
13 ***organizations, agencies, and authorities.".***
14 ***(c) TEMPORARY LIMITATIONS ON APPLICA-***
15 ***TION.—***
16 ***(1) 1-YEAR DELAY IN APPLICATION.—The***
17 ***following provisions of title XVIII of the***
18 ***Homeland Security Act of 2002, as amend-***
19 ***ed by subsection (a), shall not apply dur-***
20 ***ing the 1-year period beginning on the***
21 ***date of the enactment of this Act:***
22 ***(A) Subsections (b), (c), and***
23 ***(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 designa-

tion 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

1 ***communications systems and radios should***
2 ***continue to be deployed as soon as practicable***
3 ***for use by the first responder community, and***
4 ***that upgraded and new digital communica-***
5 ***tions systems and new digital radios must***
6 ***meet prevailing national, voluntary consensus***
7 ***standards for interoperability.***

8 ***SEC. 5008. SENSE OF CONGRESS REGARDING CITIZEN***
9 ***CORPS COUNCILS.***

10 ***(a) FINDING.—The Congress finds that Cit-***
11 ***izen Corps councils help to enhance local cit-***
12 ***izen participation in terrorism preparedness***
13 ***by coordinating multiple Citizen Corps pro-***
14 ***grams, developing community action plans,***
15 ***assessing possible threats, and identifying***
16 ***local resources.***

17 ***(b) SENSE OF CONGRESS.—It is the sense of***
18 ***the Congress that individual Citizen Corps***
19 ***councils should seek to enhance the prepared-***
20 ***ness and response capabilities of all organiza-***
21 ***tions participating in the councils, including***
22 ***by providing funding to as many of their par-***
23 ***ticipating organizations as practicable to pro-***
24 ***mote 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 Sec-

retary 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:

1 *"§ 905. Limitation on authority.*

2 *"The authority to submit reorganization*
3 *plans under this chapter is limited to the fol-*
4 *lowing organizational units:*

5 *"(1) The Office of the National Intel-*
6 *ligence Director.*

7 *"(2) The Central Intelligence Agency.*

8 *"(3) The National Security Agency.*

9 *"(4) The Defense Intelligence Agency.*

10 *"(5) The National Geospatial-Intel-*
11 *ligence Agency.*

12 *"(6) The National Reconnaissance Of-*
13 *fice.*

14 *"(7) Other offices within the Depart-*
15 *ment of Defense for the collection of spe-*
16 *cialized national intelligence through re-*
17 *connaissance programs.*

18 *"(8) The intelligence elements of the*
19 *Army, the Navy, the Air Force, the Marine*
20 *Corps, the Federal Bureau of Investiga-*
21 *tion, and the Department of Energy.*

22 *"(9) The Bureau of Intelligence and*
23 *Research of the Department of State.*

24 *"(10) The Office of Intelligence Anal-*
25 *ysis 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.—Section 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".

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.

1 *"(c) LIMITATION ON CONCURRENT EMPLOY-*
2 *MENT.—Except as provided in subsection (d),*
3 *the Director of the Office of counternarcotics*
4 *Enforcement shall not be employed by, as-*
5 *signed to, or serve as the head of, any other*
6 *branch of the Federal Government, any State*
7 *or local government, or any subdivision of the*
8 *Department other than the Office of counter-*
9 *narcotics Enforcement.*
10 *"(d) ELIGIBILITY TO SERVE AS THE UNITED*
11 *STATES INTERDICTION COORDINATOR.—The Di-*
12 *rector of the Office of counternarcotics En-*
13 *forcement may be appointed as the United*
14 *States Interdiction Coordinator by the Direc-*
15 *tor of the Office of National Drug Control Pol-*
16 *icy, and shall be the only person at the Depart-*
17 *ment eligible to be so appointed.*
18 *"(e) RESPONSIBILITIES.—The Secretary*
19 *shall direct the Director of the Office of*
20 *counternarcotics Enforcement—*
21 *"(1) to coordinate policy and oper-*
22 *ations within the Department, between the*
23 *Department and other Federal depart-*
24 *ments and agencies, and between the De-*
25 *partment 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) 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 ad-

justment 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 in-

auguration 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 re-

ceived 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 indi-

vidual 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;

1 *"(D) greater than $1,000,000 but not*
2 *more than $2,500,000; and*
3 *"(E) greater than $2,500,000.*
4 *"(2) For the purposes of subsection (a)(3)*
5 *if the current value of an interest in real prop-*
6 *erty (or an interest in a real estate partner-*
7 *ship) is not ascertainable without an ap-*
8 *praisal, an individual may list (A) the date of*
9 *purchase and the purchase price of the inter-*
10 *est in the real property, or (B) the assessed*
11 *value of the real property for tax purposes, ad-*
12 *justed to reflect the market value of the prop-*
13 *erty used for the assessment if the assessed*
14 *value is computed at less than 100 percent of*
15 *such market value, but such individual shall*
16 *include in his report a full and complete de-*
17 *scription of the method used to determine such*
18 *assessed value, instead of specifying a cat-*
19 *egory of value pursuant to paragraph (1). If*
20 *the current value of any other item required to*
21 *be reported under subsection (a)(3) is not as-*
22 *certainable without an appraisal, such indi-*
23 *vidual may list the book value of a corporation*
24 *whose stock is not publicly traded, the net*
25 *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:

1 *"(A)(i) The trustee of the trust and*
2 *any other entity designated in the trust*
3 *instrument to perform fiduciary duties is*
4 *a financial institution, an attorney, a cer-*
5 *tified public accountant, a broker, or an*
6 *investment advisor who—*
7 *"(I) is independent of and not as-*
8 *sociated with any interested party so*
9 *that the trustee or other person can-*
10 *not be controlled or influenced in the*
11 *administration of the trust by any in-*
12 *terested party;*
13 *"(II) is not and has not been an*
14 *employee of or affiliated with any in-*
15 *terested party and is not a partner of,*
16 *or involved in any joint venture or*
17 *other investment with, any interested*
18 *party; and*
19 *"(III) is not a relative of any inter-*
20 *ested party.*
21 *"(ii) Any officer or employee of a trust-*
22 *ee or other entity who is involved in the*
23 *management or control of the trust—*
24 *"(I) is independent of and not as-*
25 *sociated 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 appli-

cable 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 inter-

ested 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 re-

quired 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 in-

dividual 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 in-

1 *dividual is in compliance with such laws*
2 *and regulations.*
3 *"(3) If the Director of the Office of Govern-*
4 *ment Ethics, the Secretary concerned, or the*
5 *designated agency ethics official reaches an*
6 *opinion under paragraph (2)(B) that an indi-*
7 *vidual is not in compliance with applicable*
8 *laws and regulations, the official shall notify*
9 *the individual of that opinion and, after an*
10 *opportunity for personal consultation (if prac-*
11 *ticable), determine and notify the individual*
12 *of which steps, if any, would in the opinion of*
13 *such official be appropriate for assuring com-*
14 *pliance with such laws and regulations and*
15 *the date by which such steps should be taken.*
16 *Such steps may include, as appropriate—*
17 *"(A) divestiture,*
18 *"(B) restitution,*
19 *"(C) the establishment of a blind*
20 *trust,*
21 *"(D) request for an exemption under*
22 *section 208(b) of title 18, United States*
23 *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 pro-

mulgated 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

1 *"(B) is a dependent of such report-*
2 *ing individual within the meaning of*
3 *section 152 of the Internal Revenue*
4 *Code of 1986 (26 U.S.C. 152);*
5 *"(2) the term 'designated agency ethics*
6 *official' means an officer or employee who*
7 *is designated to administer the provisions*
8 *of this title within an agency;*
9 *"(3) the term 'executive branch' in-*
10 *cludes—*
11 *"(A) each Executive agency (as de-*
12 *fined in section 105 of title 5, United*
13 *States Code), other than the General*
14 *Accounting Office; and*
15 *"(B) any other entity or adminis-*
16 *trative unit in the executive branch;*
17 *"(4) the term 'gift' means a payment,*
18 *advance, forbearance, rendering, or de-*
19 *posit of money, or any thing of value, un-*
20 *less consideration of equal or greater*
21 *value is received by the donor, but does*
22 *not include—*
23 *"(A) bequests and other forms of*
24 *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 re-

ceived 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 *(1) by striking "(b)" and inserting*
2 *"(b)(1)"; and*
3 *(2) by adding at the end the following:*
4 *"(2) In the case of employees of the Federal*
5 *Bureau of Investigation, the second sentence of*
6 *paragraph (1) shall be applied by substituting*
7 *'65 years of age' for '60 years of age'. The au-*
8 *thority to grant exemptions in accordance*
9 *with the preceding sentence shall cease to be*
10 *available after December 31, 2009.".*
11 *(b) FEDERAL EMPLOYEES' RETIREMENT SYS-*
12 *TEM.—Section 8425(b) of title 5, United States*
13 *Code, is amended—*
14 *(1) by striking "(b)" and inserting*
15 *"(b)(1)"; and*
16 *(2) by adding at the end the following:*
17 *"(2) In the case of employees of the Federal*
18 *Bureau of Investigation, the second sentence of*
19 *paragraph (1) shall be applied by substituting*
20 *'65 years of age' for '60 years of age'. The au-*
21 *thority to grant exemptions in accordance*
22 *with the preceding sentence shall cease to be*
23 *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

1 ***shall cease to be available after December 31,***
2 ***2009.".***
3 ***(b) CLERICAL AMENDMENT.—The analysis***
4 ***for chapter 57 of title 5, United States Code, is***
5 ***amended by adding at the end the following:***

"5759. Retention and relocation bonuses for the Federal Bureau of Investigation.".

6 ***SEC. 5053. FEDERAL BUREAU OF INVESTIGATION RESERVE***
7 ***SERVICE.***
8 ***(a) IN GENERAL.—Chapter 35 of title 5,***
9 ***United States Code, is amended by adding at***
10 ***the end the following:***
11 ***"SUBCHAPTER VII—RETENTION OF RE-***
12 ***TIRED SPECIALIZED EMPLOYEES AT***
13 ***THE FEDERAL BUREAU OF INVESTIGA-***
14 ***TION***
15 ***"§ 3598. Federal Bureau of Investigation Reserve Serv-***
16 ***ice***
17 ***"(a) ESTABLISHMENT.—The Director of the***
18 ***Federal Bureau of Investigation may provide***
19 ***for the establishment and training of a Fed-***
20 ***eral Bureau of Investigation Reserve Service***
21 ***(hereinafter in this section referred to as the***
22 ***'FBI Reserve Service') for temporary reemploy-***
23 ***ment of employees in the Bureau during peri-***

1 ***ods of emergency, as determined by the Direc-***
2 ***tor.***
3 ***"(b) MEMBERSHIP.—Membership in the FBI***
4 ***Reserve Service shall be limited to individuals***
5 ***who previously served as full-time employees of***
6 ***the Bureau.***
7 ***"(c) ANNUITANTS.—If an individual receiv-***
8 ***ing an annuity from the Civil Service Retire-***
9 ***ment and Disability Fund on the basis of such***
10 ***individual's service becomes temporarily reem-***
11 ***ployed pursuant to this section, such annuity***
12 ***shall not be discontinued thereby. An indi-***
13 ***vidual so reemployed shall not be considered***
14 ***an employee for the purposes of chapter 83 or***
15 ***84.***
16 ***"(d) NO IMPACT ON BUREAU PERSONNEL***
17 ***CEILING.—FBI Reserve Service members reem-***
18 ***ployed on a temporary basis pursuant to this***
19 ***section shall not count against any personnel***
20 ***ceiling applicable to the Bureau.***
21 ***"(e) EXPENSES.—The Director may provide***
22 ***members of the FBI Reserve Service transpor-***
23 ***tation and per diem in lieu of subsistence, in***
24 ***accordance with applicable provisions of this***
25 ***title, for the purpose of participating in any***

1 *training that relates to service as a member of*
2 *the FBI Reserve Service.*
3 *"(f) LIMITATION ON MEMBERSHIP.—Member-*
4 *ship of the FBI Reserve Service is not to exceed*
5 *500 members at any given time.".*
6 *(b) CLERICAL AMENDMENT.—The analysis*
7 *for chapter 35 of title 5, United States Code, is*
8 *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.".

9 *SEC. 5054. CRITICAL POSITIONS IN THE FEDERAL BUREAU*
10 *OF INVESTIGATION INTELLIGENCE DIREC-*
11 *TORATE.*
12 *Section 5377(a)(2) of title 5, United States*
13 *Code, is amended—*
14 *(1) by striking "and" at the end of sub-*
15 *paragraph (E);*
16 *(2) by striking the period at the end of*
17 *subparagraph (F) and inserting "; and";*
18 *and*
19 *(3) by inserting after subparagraph*
20 *(F) the following:*
21 *"(G) a position at the Federal Bu-*
22 *reau of Investigation, the primary du-*
23 *ties and responsibilities of which re-*

late 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.

1 ***(c) PROHIBITION ON DUPLICATIVE INVESTIGA-***
2 ***TIONS.—An authorized investigative agency or***
3 ***authorized adjudicative agency may not con-***
4 ***duct an investigation for purposes of deter-***
5 ***mining whether to grant a security clearance***
6 ***to an individual where a current investigation***
7 ***or clearance of equal level already exists or***
8 ***has been granted by another authorized adju-***
9 ***dicative agency.***

10 ***SEC. 5074. ESTABLISHMENT OF NATIONAL DATABASE .***

11 ***(a) ESTABLISHMENT.—Not later than 12***
12 ***months after the date of the enactment of this***
13 ***Act, the Director of the Office of Personnel***
14 ***Management, in cooperation with the Director,***
15 ***shall establish, and begin operating and***
16 ***maintaining, an integrated, secure, national***
17 ***database into which appropriate data rel-***
18 ***evant to the granting, denial, or revocation of***
19 ***a security clearance or access pertaining to***
20 ***military, civilian, or government contractor***
21 ***personnel shall be entered from all authorized***
22 ***investigative and adjudicative agencies.***

23 ***(b) INTEGRATION.—The national database***
24 ***established under subsection (a) shall func-***
25 ***tion to integrate information from existing***

1 ***Federal clearance tracking systems from other***
2 ***authorized investigative and adjudicative***
3 ***agencies into a single consolidated database.***
4 ***(c) REQUIREMENT TO CHECK DATABASE.—***
5 ***Each authorized investigative or adjudicative***
6 ***agency shall check the national database es-***
7 ***tablished under subsection (a) to determine***
8 ***whether an individual the agency has identi-***
9 ***fied as requiring a security clearance has al-***
10 ***ready been granted or denied a security clear-***
11 ***ance, or has had a security clearance revoked,***
12 ***by any other authorized investigative or adju-***
13 ***dicative agency.***
14 ***(d) CERTIFICATION OF AUTHORIZED INVES-***
15 ***TIGATIVE AGENCIES OR AUTHORIZED ADJUDICA-***
16 ***TIVE AGENCIES.—The Director shall evaluate***
17 ***the extent to which an agency is submitting in-***
18 ***formation to, and requesting information***
19 ***from, the national database established under***
20 ***subsection (a) as part of a determination of***
21 ***whether to certify the agency as an authorized***
22 ***investigative agency or authorized adjudica-***
23 ***tive agency.***
24 ***(e) EXCLUSION OF CERTAIN INTELLIGENCE***
25 ***OPERATIVES.—The Director may authorize an***

1 ***agency to withhold information about certain***
2 ***individuals from the database established***
3 ***under subsection (a) if the Director determines***
4 ***it is necessary for national security purposes.***
5 ***(f) COMPLIANCE.—The Director shall estab-***
6 ***lish a review procedure by which agencies can***
7 ***seek review of actions required under section***
8 ***5073.***
9 ***(g) AUTHORIZATION OF APPROPRIATIONS.—***
10 ***There is authorized to be appropriated such***
11 ***sums as may be necessary for fiscal year 2005***
12 ***and each subsequent fiscal year for the imple-***
13 ***mentation, maintenance and operation of the***
14 ***database established in subsection (a).***
15 ***SEC. 5075. USE OF AVAILABLE TECHNOLOGY IN CLEARANCE***
16 ***INVESTIGATIONS.***
17 ***(a) INVESTIGATIONS.—Not later than 12***
18 ***months after the date of the enactment of this***
19 ***Act, each authorized investigative agency that***
20 ***conducts personnel security clearance inves-***
21 ***tigations shall use, to the maximum extent***
22 ***practicable, available information technology***
23 ***and databases to expedite investigative proc-***
24 ***esses and to verify standard information sub-***

1 ***mitted as part of an application for a security***
2 ***clearance.***
3 ***(b) INTERIM CLEARANCE.—If the application***
4 ***of an applicant for an interim clearance has***
5 ***been processed using the technology under***
6 ***subsection (a), the interim clearances for the***
7 ***applicant at the secret, top secret, and special***
8 ***access program levels may be granted before***
9 ***the completion of the appropriate investiga-***
10 ***tion. Any request to process an interim clear-***
11 ***ance shall be given priority, and the authority***
12 ***granting the interim clearance shall ensure***
13 ***that final adjudication on the application is***
14 ***made within 90 days after the initial clear-***
15 ***ance is granted.***
16 ***(c) ON-GOING MONITORING OF INDIVIDUALS***
17 ***WITH SECURITY CLEARANCES.—(1) Authorized***
18 ***investigative agencies and authorized adju-***
19 ***dicative agencies shall establish procedures***
20 ***for the regular, ongoing verification of per-***
21 ***sonnel with security clearances in effect for***
22 ***continued access to classified information.***
23 ***Such procedures shall include the use of avail-***
24 ***able technology to detect, on a regularly recur-***
25 ***ring basis, any issues of concern that may***

1 ***arise involving such personnel and such ac-***
2 ***cess.***
3 ***(2) Such regularly recurring verification***
4 ***may be used as a basis for terminating a secu-***
5 ***rity clearance or access and shall be used in***
6 ***periodic reinvestigations to address emerging***
7 ***threats and adverse events associated with in-***
8 ***dividuals with security clearances in effect to***
9 ***the maximum extent practicable.***
10 ***(3) If the Director certifies that the na-***
11 ***tional security of the United States is not***
12 ***harmed by the discontinuation of periodic re-***
13 ***investigations, the regularly recurring***
14 ***verification under this section may replace***
15 ***periodic reinvestigations.***
16 ***SEC. 5076. REDUCTION IN LENGTH OF PERSONNEL SECU-***
17 ***RITY CLEARANCE PROCESS.***
18 ***(a) 60-DAY PERIOD FOR DETERMINATION ON***
19 ***CLEARANCES.—Each authorized adjudicative***
20 ***agency shall make a determination on an ap-***
21 ***plication for a personnel security clearance***
22 ***within 60 days after the date of receipt of the***
23 ***completed application for a security clearance***
24 ***by an authorized investigative agency. The 60-***
25 ***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 in-

1 ***auguration of the Vice-President-elect as Vice***
2 ***President.***
3 ***(b) SECURITY CLEARANCES FOR TRANSITION***
4 ***TEAM MEMBERS.—(1) In this section, the term***
5 ***"major party" has the meaning provided***
6 ***under section 9002(6) of the Internal Revenue***
7 ***Code of 1986.***
8 ***(2) Each major party candidate for Presi-***
9 ***dent, except a candidate who is the incumbent***
10 ***President, shall submit, before the date of the***
11 ***general presidential election, requests for se-***
12 ***curity clearances for prospective transition***
13 ***team members who will have a need for access***
14 ***to classified information to carry out their re-***
15 ***sponsibilities as members of the President-***
16 ***elect's transition team.***
17 ***(3) Necessary background investigations***
18 ***and eligibility determinations to permit ap-***
19 ***propriate prospective transition team mem-***
20 ***bers to have access to classified information***
21 ***shall be completed, to the fullest extent prac-***
22 ***ticable, by the day after the date of the general***
23 ***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

CHAPTER 1—EMERGENCY PREPAREDNESS FOR FISCAL AUTHORITIES

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. 5081A. TREASURY SUPPORT FOR FINANCIAL SERVICES INDUSTRY PREPAREDNESS AND RESPONSE.

(a) CONGRESSIONAL FINDING.—The Congress finds that the Secretary of the Treasury—

(1) has successfully communicated and coordinated with the private-sector financial services industry about counter-terrorist financing activities and preparedness;

(2) has successfully reached out to State and local governments and regional public-private partnerships, such as ChicagoFIRST, that protect employees and critical infrastructure by enhancing communication and coordinating plans

for disaster preparedness and business continuity; and

(3) has set an example for the Department of Homeland Security and other Federal agency partners, whose active participation is vital to the overall success of the activities described in paragraphs (1) and (2).

(b) FURTHER EDUCATION AND PREPARATION EFFORTS.—It is the sense of Congress that the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and other Federal agency partners, should—

(1) furnish sufficient personnel and technological and financial resources to foster the formation of public-private sector coalitions, similar to ChicagoFIRST, that, in collaboration with the Department of Treasury, the Department of Homeland Security, and other Federal agency partners, would educate consumers and employees of the financial services industry about domestic counter-terrorist financing activities, including—

1 *(A) how the public and private*
2 *sector organizations involved in*
3 *counter-terrorist financing activities*
4 *can help to combat terrorism and si-*
5 *multaneously protect and preserve the*
6 *lives and civil liberties of consumers*
7 *and employees of the financial serv-*
8 *ices industry; and*
9 *(B) how consumers and employees*
10 *of the financial services industry can*
11 *assist the public and private sector or-*
12 *ganizations involved in counter-ter-*
13 *rorist financing activities; and*
14 *(2) submit annual reports to the Con-*
15 *gress on Federal efforts, in conjunction*
16 *with public-private sector coalitions, to*
17 *educate consumers and employees of the*
18 *financial services industry about domestic*
19 *counter-terrorist financing activities.*

CHAPTER 2—MARKET PREPAREDNESS

Subchapter A—Netting of Financial Contracts

SEC. 5082. SHORT TITLE.

This subchapter may be cited as the "Financial Contracts Bankruptcy Reform Act of 2004".

SEC. 5082A. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) by striking "subsection—" and inserting "subsection, the following definitions shall apply:"; and

(B) in clause (i), by inserting ", resolution, or order" after "any similar agreement that the Corporation determines by regulation".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) by striking "subsection—" and inserting "subsection, the following definitions shall apply:"; and

(B) in clause (i), by inserting ", resolution, or order" after "any similar agreement that the Board determines by regulation".

(b) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mort-

gage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

"(III) means any option entered into on a national securities exchange relating to foreign currencies;

"(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(V) means any margin loan;

"(VI) means any other agreement or transaction that

is similar to any agreement or transaction referred to in this clause;

"(VII) means any combination of the agreements or transactions referred to in this clause;

"(VIII) means any option to enter into any agreement or transaction referred to in this clause;

"(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered

to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

"(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(ii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as follows:

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a

security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board deter-

mines by regulation, resolution, or order to include any such agreement within the meaning of such term;

"(III) means any option entered into on a national securities exchange relating to foreign currencies;

"(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(V) means any margin loan;

"(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) means any combination of the agreements or transactions referred to in this clause;

"(VIII) means any option to enter into any agreement or transaction referred to in this clause;

"(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or

transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

"(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(c) DEFINITION OF COMMODITY CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C.

1 ***1821(e)(8)(D)(iii)) is amended to read as***
2 ***follows:***
3 ***"(iii) COMMODITY CONTRACT.—***
4 ***The term 'commodity contract'***
5 ***means—***
6 ***"(I) with respect to a fu-***
7 ***tures commission merchant, a***
8 ***contract for the purchase or***
9 ***sale of a commodity for future***
10 ***delivery on, or subject to the***
11 ***rules of, a contract market or***
12 ***board of trade;***
13 ***"(II) with respect to a for-***
14 ***eign futures commission mer-***
15 ***chant, a foreign future;***
16 ***"(III) with respect to a le-***
17 ***verage transaction merchant,***
18 ***a leverage transaction;***
19 ***"(IV) with respect to a***
20 ***clearing organization, a con-***
21 ***tract for the purchase or sale***
22 ***of a commodity for future de-***
23 ***livery on, or subject to the***
24 ***rules of, a contract market or***
25 ***board of trade that is cleared***

by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred

to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in

connection with any agreement or transaction referred to in this clause.".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as follows:

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a con-

tract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or trans-

action referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other

credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(d) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or

by-product thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master

agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.".

1 ***(2) INSURED CREDIT UNIONS.—Section***
2 ***207(c)(8)(D)(iv) of the Federal Credit***
3 ***Union Act (12 U.S.C. 1787(c)(8)(D)(iv)) is***
4 ***amended to read as follows:***
5 ***"(iv) FORWARD CONTRACT.—The***
6 ***term 'forward contract' means—***
7 ***"(I) a contract (other than***
8 ***a commodity contract) for the***
9 ***purchase, sale, or transfer of a***
10 ***commodity or any similar***
11 ***good, article, service, right, or***
12 ***interest which is presently or***
13 ***in the future becomes the sub-***
14 ***ject of dealing in the forward***
15 ***contract trade, or product or***
16 ***by-product thereof, with a ma-***
17 ***turity date more than 2 days***
18 ***after the date the contract is***
19 ***entered into, including, a re-***
20 ***purchase transaction, reverse***
21 ***repurchase transaction, con-***
22 ***signment, lease, swap, hedge***
23 ***transaction, deposit, loan, op-***
24 ***tion, allocated transaction,***

unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to

each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.".

(e) DEFINITION OF REPURCHASE AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement'

1 *(which definition also applies to a*
2 *reverse repurchase agreement)—*
3 *"(I) means an agreement,*
4 *including related terms, which*
5 *provides for the transfer of*
6 *one or more certificates of de-*
7 *posit, mortgage-related securi-*
8 *ties (as such term is defined in*
9 *the Securities Exchange Act of*
10 *1934), mortgage loans, inter-*
11 *ests in mortgage-related secu-*
12 *rities or mortgage loans, eligi-*
13 *ble bankers' acceptances,*
14 *qualified foreign government*
15 *securities or securities that*
16 *are direct obligations of, or*
17 *that are fully guaranteed by,*
18 *the United States or any agen-*
19 *cy of the United States against*
20 *the transfer of funds by the*
21 *transferee of such certificates*
22 *of deposit, eligible bankers' ac-*
23 *ceptances, securities, mort-*
24 *gage loans, or interests with a*
25 *simultaneous agreement by*

such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(v) of the Federal Credit

Union Act (12 U.S.C. 1787(c)(8)(D)(v)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates

of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction

under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).".

(f) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

"(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

"(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agree-

ment; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

"(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, cur-

1 ***rencies, commodities, equity***
2 ***securities or other equity in-***
3 ***struments, debt securities or***
4 ***other debt instruments, quan-***
5 ***titative measures associated***
6 ***with an occurrence, extent of***
7 ***an occurrence, or contingency***
8 ***associated with a financial,***
9 ***commercial, or economic con-***
10 ***sequence, or economic or fi-***
11 ***nancial indices or measures of***
12 ***economic or financial risk or***
13 ***value;***
14 ***"(III) any combination of***
15 ***agreements or transactions re-***
16 ***ferred to in this clause;***
17 ***"(IV) any option to enter***
18 ***into any agreement or trans-***
19 ***action referred to in this***
20 ***clause;***
21 ***"(V) a master agreement***
22 ***that provides for an agree-***
23 ***ment or transaction referred***
24 ***to in subclause (I), (II), (III),***
25 ***or (IV), together with all sup-***

plements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following new clause:

1 *"(vi) SWAP AGREEMENT.—The*
2 *term 'swap agreement' means—*
3 *"(I) any agreement, includ-*
4 *ing the terms and conditions*
5 *incorporated by reference in*
6 *any such agreement, which is*
7 *an interest rate swap, option,*
8 *future, or forward agreement,*
9 *including a rate floor, rate*
10 *cap, rate collar, cross-cur-*
11 *rency rate swap, and basis*
12 *swap; a spot, same day-tomor-*
13 *row, tomorrow-next, forward,*
14 *or other foreign exchange or*
15 *precious metals agreement; a*
16 *currency swap, option, future,*
17 *or forward agreement; an eq-*
18 *uity index or equity swap, op-*
19 *tion, future, or forward agree-*
20 *ment; a debt index or debt*
21 *swap, option, future, or for-*
22 *ward agreement; a total re-*
23 *turn, credit spread or credit*
24 *swap, option, future, or for-*
25 *ward agreement; a commodity*

index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

"(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of

an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

"(III) any combination of agreements or transactions referred to in this clause;

"(IV) any option to enter into any agreement or transaction referred to in this clause;

"(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause,

except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement

under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.".

(g) DEFINITION OF TRANSFER.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with

property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) (as amended by subsection (f) of this section) is amended by adding at the end the following new clause:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.".

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal De-

1 ***posit Insurance Act (12 U.S.C. 1821(e)(8))***
2 ***is amended—***
3 ***(A) in subparagraph (A)—***
4 ***(i) by striking "paragraph***
5 ***(10)" and inserting "paragraphs***
6 ***(9) and (10)";***
7 ***(ii) in clause (i), by striking***
8 ***"to cause the termination or liq-***
9 ***uidation" and inserting "such per-***
10 ***son has to cause the termination,***
11 ***liquidation, or acceleration"; and***
12 ***(iii) by striking clause (ii) and***
13 ***inserting the following new***
14 ***clause:***
15 ***"(ii) any right under any secu-***
16 ***rity agreement or arrangement or***
17 ***other credit enhancement related***
18 ***to one or more qualified financial***
19 ***contracts described in clause (i);";***
20 ***and***
21 ***(B) in subparagraph (E), by strik-***
22 ***ing clause (ii) and inserting the fol-***
23 ***lowing:***
24 ***"(ii) any right under any secu-***
25 ***rity agreement or arrangement or***

other credit enhancement related to one or more qualified financial contracts described in clause (i);".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking "paragraph (12)" and inserting "paragraphs (9) and (10)";

(ii) in clause (i), by striking "to cause the termination or liquidation" and inserting "such person has to cause the termination, liquidation, or acceleration"; and

(iii) by striking clause (ii) and inserting the following new clause:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);"; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following new clause:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);".

(i) AVOIDANCE OF TRANSFERS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Corporation".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoid-

ance of preferential or fraudulent transfers," before "the Board".

SEC. 5082B. AUTHORITY OF THE FDIC AND NCUAB WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (E), by striking "other than paragraph (12) of this subsection, subsection (d)(9)" and inserting "other than subsections (d)(9) and (e)(10)"; and

(B) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs

(9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon ter-

mination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting "or the exercise of rights or powers by" after "the appointment of".

(b) NATIONAL CREDIT UNION ADMINISTRATION BOARD.—

(1) IN GENERAL.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (E) (as amended by section 2(h)), by striking "other than paragraph (12) of this subsection, subsection (b)(9)" and inserting "other than subsections (b)(9) and (c)(10)"; and

(B) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial con-

tract of an insured credit union in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 207(c)(12)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(12)(A)) is amended by inserting "or the exercise of rights or powers by" after "the appointment of".

SEC. 5082C. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.— Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

"(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

1 *"(I) all qualified financial*
2 *contracts between any person*
3 *or any affiliate of such person*
4 *and the depository institution*
5 *in default;*
6 *"(II) all claims of such*
7 *person or any affiliate of such*
8 *person against such deposi-*
9 *tory institution under any*
10 *such contract (other than any*
11 *claim which, under the terms*
12 *of any such contract, is subor-*
13 *dinated to the claims of gen-*
14 *eral unsecured creditors of*
15 *such institution);*
16 *"(III) all claims of such*
17 *depository institution against*
18 *such person or any affiliate of*
19 *such person under any such*
20 *contract; and*
21 *"(IV) all property securing*
22 *or any other credit enhance-*
23 *ment for any contract de-*
24 *scribed in subclause (I) or any*
25 *claim described in subclause*

(II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

"(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any

netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.".

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking "the conservator" and all that follows through the period and inserting the following: "the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in

the case of a receivership, or the business day following such transfer in the case of a conservatorship.".

(3) RIGHTS AGAINST RECEIVER AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

"(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improve-

ment Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

"(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation

Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

"(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy,

or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

"(i) A bridge bank.

"(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

"(I) immediately upon the organization of the institution; or

"(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.".

(b) INSURED CREDIT UNIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 207(c)(9) of the Federal Credit Union Act (12 U.S.C. 1787(c)(9)) is amended to read as follows:

1 *"(9) TRANSFER OF QUALIFIED FINANCIAL*
2 *CONTRACTS.—*
3 *"(A) IN GENERAL.—In making any*
4 *transfer of assets or liabilities of a*
5 *credit union in default which includes*
6 *any qualified financial contract, the*
7 *conservator or liquidating agent for*
8 *such credit union shall either—*
9 *"(i) transfer to 1 financial in-*
10 *stitution, other than a financial*
11 *institution for which a conser-*
12 *vator, receiver, trustee in bank-*
13 *ruptcy, or other legal custodian*
14 *has been appointed or which is*
15 *otherwise the subject of a bank-*
16 *ruptcy or insolvency proceeding—*
17 *"(I) all qualified financial*
18 *contracts between any person*
19 *or any affiliate of such person*
20 *and the credit union in de-*
21 *fault;*
22 *"(II) all claims of such*
23 *person or any affiliate of such*
24 *person against such credit*
25 *union under any such con-*

tract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

"(III) all claims of such credit union against such person or any affiliate of such person under any such contract; and

"(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

1 *"(B) TRANSFER TO FOREIGN BANK,*
2 *FOREIGN FINANCIAL INSTITUTION, OR*
3 *BRANCH OR AGENCY OF A FOREIGN BANK*
4 *OR FINANCIAL INSTITUTION.—In trans-*
5 *ferring any qualified financial con-*
6 *tracts and related claims and prop-*
7 *erty under subparagraph (A)(i), the*
8 *conservator or liquidating agent for*
9 *the credit union shall not make such*
10 *transfer to a foreign bank, financial*
11 *institution organized under the laws*
12 *of a foreign country, or a branch or*
13 *agency of a foreign bank or financial*
14 *institution unless, under the law ap-*
15 *plicable to such bank, financial insti-*
16 *tution, branch or agency, to the quali-*
17 *fied financial contracts, and to any*
18 *netting contract, any security agree-*
19 *ment or arrangement or other credit*
20 *enhancement related to 1 or more*
21 *qualified financial contracts, the con-*
22 *tractual rights of the parties to such*
23 *qualified financial contracts, netting*
24 *contracts, security agreements or ar-*
25 *rangements, or other credit enhance-*

ments are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regu-

lation to be a financial institution; and

"(ii) the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.".

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 207(c)(10)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)(A)) is amended in the material immediately following clause (ii) by striking "the conservator" and all that follows through the period and inserting the following: "the conservator or liquidating agent shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.".

1 *(3) RIGHTS AGAINST LIQUIDATING AGENT*
2 *AND CONSERVATOR AND TREATMENT OF*
3 *BRIDGE BANKS.—Section 207(c)(10) of the*
4 *Federal Credit Union Act (12 U.S.C.*
5 *1787(c)(10)) is amended—*
6 *(A) by redesignating subpara-*
7 *graph (B) as subparagraph (D); and*
8 *(B) by inserting after subpara-*
9 *graph (A) the following new subpara-*
10 *graphs:*
11 *"(B) CERTAIN RIGHTS NOT ENFORCE-*
12 *ABLE.—*
13 *"(i) LIQUIDATION.—A person*
14 *who is a party to a qualified fi-*
15 *nancial contract with an insured*
16 *credit union may not exercise any*
17 *right that such person has to ter-*
18 *minate, liquidate, or net such con-*
19 *tract under paragraph (8)(A) of*
20 *this subsection or section 403 or*
21 *404 of the Federal Deposit Insur-*
22 *ance Corporation Improvement*
23 *Act of 1991, solely by reason of or*
24 *incidental to the appointment of a*
25 *liquidating agent for the credit*

union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

"(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason

of or incidental to the appointment of a conservator for the credit union or the insolvency or financial condition of the credit union for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

"(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the sub-

ject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

"(i) A bridge bank.

"(ii) A credit union organized by the Board, for which a conservator is appointed either—

"(I) immediately upon the organization of the credit union; or

"(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.".

SEC. 5082D. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the depository institution in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person)."; and

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

"(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.".

(b) INSURED CREDIT UNIONS.—Section 207(c) of the Federal Credit Union Act (12 U.S.C. 1787(c)) is amended—

(1) by redesignating paragraphs (11), (12), and (13) as paragraphs (12), (13), and (14), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or liquidating

agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the credit union in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person)."; and

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

"(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any simi-

lar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section (a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.".

SEC. 5082E. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single

qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.".

(b) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by inserting after clause (vi) (as added by section 5082A(f) of this subchapter) the following new clause:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together

with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.".

SEC. 5082F. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon ", or is exempt from such registration by order of the Securities and Exchange Commission"; and

(B) in subparagraph (B), by inserting before the period ", that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)";

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;"; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

"(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;";

(3) in paragraph (11), by inserting before the period "and any other clearing organization with which such clearing organization has a netting contract";

(4) by amending paragraph (14)(A)(i) to read as follows:

"(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and"; and

(5) by adding at the end the following new paragraph:

"(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.".

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions

shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).”; and

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

“(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).”.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the

Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

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

1 *"(h) ENFORCEABILITY OF SECURITY AGREE-*
2 *MENTS.—The provisions of any security agree-*
3 *ment or arrangement or other credit enhance-*
4 *ment related to one or more netting contracts*
5 *between any 2 members of a clearing organiza-*
6 *tion shall be enforceable in accordance with*
7 *their terms (except as provided in section*
8 *561(b)(2) of title 11, United States Code), and*
9 *shall not be stayed, avoided, or otherwise lim-*
10 *ited by any State or Federal law (other than*
11 *paragraphs (8)(E), (8)(F), and (10)(B) of sec-*
12 *tion 11(e) of the Federal Deposit Insurance*
13 *Act, paragraphs (8)(E), (8)(F), and (10)(B) of*
14 *section 207(c) of the Federal Credit Union Act,*
15 *and section 5(b)(2) of the Securities Investor*
16 *Protection Act of 1970).".*
17 *(d) ENFORCEABILITY OF CONTRACTS WITH*
18 *UNINSURED NATIONAL BANKS, UNINSURED FED-*
19 *ERAL BRANCHES AND AGENCIES, CERTAIN UNIN-*
20 *SURED STATE MEMBER BANKS, AND EDGE ACT*
21 *CORPORATIONS.—The Federal Deposit Insur-*
22 *ance Corporation Improvement Act of 1991 (12*
23 *U.S.C. 4401 et seq.) is amended—*
24 *(1) by redesignating section 407 as sec-*
25 *tion 407A; and*

1 *(2) by inserting after section 406 the*
2 *following new section:*
3 *"SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED*
4 *NATIONAL BANKS, UNINSURED FEDERAL*
5 *BRANCHES AND AGENCIES, CERTAIN UNIN-*
6 *SURED STATE MEMBER BANKS, AND EDGE*
7 *ACT CORPORATIONS.*
8 *"(a) IN GENERAL.—Notwithstanding any*
9 *other provision of law, paragraphs (8), (9),*
10 *(10), and (11) of section 11(e) of the Federal De-*
11 *posit Insurance Act shall apply to an unin-*
12 *sured national bank or uninsured Federal*
13 *branch or Federal agency, a corporation char-*
14 *tered under section 25A of the Federal Reserve*
15 *Act, or an uninsured State member bank*
16 *which operates, or operates as, a multilateral*
17 *clearing organization pursuant to section 409*
18 *of this Act, except that for such purpose—*
19 *"(1) any reference to the 'Corporation*
20 *as receiver' or 'the receiver or the Cor-*
21 *poration' shall refer to the receiver ap-*
22 *pointed by the Comptroller of the Cur-*
23 *rency in the case of an uninsured na-*
24 *tional bank or uninsured Federal branch*
25 *or agency, or to the receiver appointed by*

the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

"(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

"(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered

1 *under section 25A of the Federal Reserve*
2 *Act, or an uninsured State member bank*
3 *which operates, or operates as, a multilat-*
4 *eral clearing organization pursuant to*
5 *section 409 of this Act.*
6 *"(b) LIABILITY.—The liability of a receiver*
7 *or conservator of an uninsured national bank,*
8 *uninsured Federal branch or agency, a cor-*
9 *poration chartered under section 25A of the*
10 *Federal Reserve Act, or an uninsured State*
11 *member bank which operates, or operates as,*
12 *a multilateral clearing organization pursuant*
13 *to section 409 of this Act, shall be determined*
14 *in the same manner and subject to the same*
15 *limitations that apply to receivers and con-*
16 *servators of insured depository institutions*
17 *under section 11(e) of the Federal Deposit In-*
18 *surance Act.*
19 *"(c) REGULATORY AUTHORITY.—*
20 *"(1) IN GENERAL.—The Comptroller of*
21 *the Currency in the case of an uninsured*
22 *national bank or uninsured Federal*
23 *branch or agency and the Board of Gov-*
24 *ernors of the Federal Reserve System in*
25 *the case of a corporation chartered under*

section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

"(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

"(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.".

SEC. 5082G. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking "means a contract" and inserting "means—

"(A) a contract";

(ii) by striking ", or any combination thereof or option thereon;" and inserting ", or any other similar agreement;"; and

(iii) by adding at the end the following:

"(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

"(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

"(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B),

or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

"(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such

agreement or transaction, measured in accordance with section 562 of this title;";

(B) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and inserting "at any time before";

(C) by amending paragraph (47) to read as follows:

"(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(A) means—

"(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation

of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

"(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

"(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

"(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

"(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;";

(D) in paragraph (48), by inserting ", or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission," after "1934"; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'—

"(A) means—

"(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

"(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

"(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

"(III) a currency swap, option, future, or forward agreement;

"(IV) an equity index or equity swap, option, future, or forward agreement;

"(V) a debt index or debt swap, option, future, or forward agreement;

"(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

"(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

"(VIII) a weather swap, weather derivative, or weather option;

"(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

"(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

"(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

"(iii) any combination of agreements or transactions referred to in this subparagraph;

"(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

"(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with

all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

"(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection

with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;";

(2) in section 741(7), by striking paragraph (7) and inserting the following:

"(7) 'securities contract'—

"(A) means—

"(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(ii) any option entered into on a national securities exchange relating to foreign currencies;

"(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, cer-

tificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(iv) any margin loan;

"(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

"(vi) any combination of the agreements or transactions referred to in this subparagraph;

"(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

"(viii) a master agreement that provides for an agreement or transaction referred to in clause

(i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

"(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial partici-

pant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;"; and

(3) in section 761(4)—

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

(B) by adding at the end the following:

"(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

"(G) any combination of the agreements or transactions referred to in this paragraph;

"(H) any option to enter into an agreement or transaction referred to in this paragraph;

"(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

"(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or re-

imbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title;".

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

"(22) 'financial institution' means—

"(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting

as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

"(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;";

(2) by inserting after paragraph (22) the following:

"(22A) 'financial participant' means—

"(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on

any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

"(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);"; and

(3) by striking paragraph (26) and inserting the following:

"(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;".

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

"(38A) 'master netting agreement'—

"(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

"(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed

to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

"(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;".

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6), by inserting ", pledged to, under the control of," after "held by";

(B) in paragraph (7), by inserting ", pledged to, under the control of," after "held by";

(C) by striking paragraph (17) and inserting the following:

"(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;";

(D) in paragraph (18) by striking the period at the end and inserting "; or"; and

(E) by inserting after paragraph (18) the following new paragraph:

"(19) under subsection (a), of the setoff by a master netting agreement par-

ticipant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract

covered by the master netting agreement in issue.".

(2) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

"(i) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (19) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.".

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking "under a swap agreement";

(B) by striking "in connection with a swap agreement" and inserting "under or in connection with any swap agreement"; and

(C) by inserting "or financial participant" after "swap participant" each place such term appears; and

(2) by adding at the end the following:

"(i) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.".

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period and inserting "; and"; and

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

"(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.".

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section

556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility

registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the third sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a

national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement";

(2) in the first sentence, by striking "termination of a swap agreement" and inserting "liquidation, termination, or acceleration of one or more swap agreements";

(3) by striking "in connection with any swap agreement" and inserting "in connection with the termination, liquidation,

or acceleration of one or more swap agreements"; and

(4) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

1 *(1) IN GENERAL.—Title 11, United*
2 *States Code, is amended by inserting after*
3 *section 560 the following:*
4 *"§ 561. Contractual right to terminate, liquidate, ac-*
5 *celerate, or offset under a master netting*
6 *agreement and across contracts; pro-*
7 *ceedings under section 304*
8 *"(a) Subject to subsection (b), the exercise*
9 *of any contractual right, because of a condi-*
10 *tion of the kind specified in section 365(e)(1),*
11 *to cause the termination, liquidation, or accel-*
12 *eration of or to offset or net termination val-*
13 *ues, payment amounts, or other transfer obli-*
14 *gations arising under or in connection with*
15 *one or more (or the termination, liquidation,*
16 *or acceleration of one or more)—*
17 *"(1) securities contracts, as defined in*
18 *section 741(7);*
19 *"(2) commodity contracts, as defined*
20 *in section 761(4);*
21 *"(3) forward contracts;*
22 *"(4) repurchase agreements;*
23 *"(5) swap agreements; or*
24 *"(6) master netting agreements,*

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

"(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

"(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7—

"(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has

positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; and

"(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

"(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

"(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission

under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

"(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

"(c) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a

right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

"(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under section 304, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

"561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under section 304.".

1 *(l) COMMODITY BROKER LIQUIDATIONS.—*
2 *Title 11, United States Code, is amended by in-*
3 *serting after section 766 the following:*
4 *"§ 767. Commodity broker liquidation and forward*
5 *contract merchants, commodity brokers,*
6 *stockbrokers, financial institutions, fi-*
7 *nancial participants, securities clearing*
8 *agencies, swap participants, repo partici-*
9 *pants, and master netting agreement par-*
10 *ticipants*
11 *"Notwithstanding any other provision of*
12 *this title, the exercise of rights by a forward*
13 *contract merchant, commodity broker, stock-*
14 *broker, financial institution, financial partic-*
15 *ipant, securities clearing agency, swap partic-*
16 *ipant, repo participant, or master netting*
17 *agreement participant under this title shall*
18 *not affect the priority of any unsecured claim*
19 *it may have after the exercise of such rights.".*
20 *(m) STOCKBROKER LIQUIDATIONS.—Title 11,*
21 *United States Code, is amended by inserting*
22 *after section 752 the following:*

"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559, 560, or 561)";

(2) in subsection (a)(3)(C), by inserting before the period the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17),

362(b)(19), 555, 556, 559, 560, or 561 of this title)"; and

(3) in subsection (b)(1), by striking "362(b)(14)," and inserting "362(b)(17), 362(b)(19), 555, 556, 559, 560, 561,".

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking "financial institutions," each place such term appears and inserting "financial institution, financial participant,";

(2) in sections 362(b)(7) and 546(f), by inserting "or financial participant" after "repo participant" each place such term appears;

(3) in section 546(e), by inserting "financial participant," after "financial institution,";

(4) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution,";

(5) in section 548(d)(2)(C), by inserting "or financial participant" after "repo participant";

(6) in section 548(d)(2)(D), by inserting "or financial participant" after "swap participant";

(7) in section 555—

(A) by inserting "financial participant," after "financial institution,"; and

(B) by striking the second sentence and inserting the following: "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the

Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice";

(8) in section 556, by inserting ", financial participant," after "commodity broker";

(9) in section 559, by inserting "or financial participant" after "repo participant" each place such term appears; and

(10) in section 560, by inserting "or financial participant" after "swap participant".

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

"555. Contractual right to liquidate, terminate, or accelerate a securities contract.
"556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.";

and

1 *(B) by amending the items relat-*
2 *ing to sections 559 and 560 to read as*
3 *follows:*

"559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.
"560. Contractual right to liquidate, terminate, or accelerate a swap agreement.";

4 *and*
5 *(2) in the table of sections for chapter*
6 *7—*
7 *(A) by inserting after the item re-*
8 *lating to section 766 the following:*

"767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.";

9 *and*
10 *(B) by inserting after the item re-*
11 *lating to section 752 the following:*

"753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

12 *SEC. 5082H. RECORDKEEPING REQUIREMENTS.*
13 *(a) FDIC-INSURED DEPOSITORY INSTITU-*
14 *TIONS.—Section 11(e)(8) of the Federal Deposit*
15 *Insurance Act (12 U.S.C. 1821(e)(8)) is amend-*
16 *ed by adding at the end the following new sub-*
17 *paragraph:*

"(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies and the National Credit Union Administration Board, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).".

(b) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended by adding at the end the following new subparagraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial

contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 212).".

SEC. 5082I. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

"(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

"(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal re-

serve bank or Federal home loan bank; or

"(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.".

SEC. 5082J. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 5082G(k)(1) of this subchapter, the following:

"§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

"(a) If the trustee rejects a swap agreement, securities contract (as defined in section

741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

"(1) the date of such rejection; or

"(2) the date or dates of such liquidation, termination, or acceleration.

"(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

"(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract mer-

chant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

"(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

"(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates."; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section

1 *5082G(k)(2) of this subchapter) the fol-*
2 *lowing new item:*

"562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.".

3 *(b) CLAIMS ARISING FROM REJECTION.—Sec-*
4 *tion 502(g) of title 11, United States Code, is*
5 *amended—*
6 *(1) by inserting "(1)" after "(g)"; and*
7 *(2) by adding at the end the following:*
8 *"(2) A claim for damages calculated in ac-*
9 *cordance with section 562 of this title shall be*
10 *allowed under subsection (a), (b), or (c), or dis-*
11 *allowed under subsection (d) or (e), as if such*
12 *claim had arisen before the date of the filing*
13 *of the petition.".*

14 *SEC. 5082K. SIPC STAY.*

15 *Section 5(b)(2) of the Securities Investor*
16 *Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is*
17 *amended by adding at the end the following*
18 *new subparagraph:*
19 *"(C) EXCEPTION FROM STAY.—*
20 *"(i) Notwithstanding section*
21 *362 of title 11, United States Code,*
22 *neither the filing of an applica-*
23 *tion under subsection (a)(3) nor*

any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

"(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of,

securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

"(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.".

SEC. 5082L. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting "555, 556," after "553,"; and

(2) by inserting "559, 560, 561, 562" after "557,".

SEC. 5082M. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This subchapter shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this subchapter shall apply with respect to cases commenced or appointments made under any Federal or State law on or after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

SEC. 5082N. SAVINGS CLAUSE.

The meanings of terms used in this subchapter are applicable for purposes of this subchapter only, and shall not be construed or

applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

Subchapter B—Emergency Securities Response

SEC. 5086. SHORT TITLE.

This subchapter may be cited as the "Emergency Securities Response Act of 2004".

SEC. 5087. 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. 78l(k)(2)) is amended to read as follows:

"(2) EMERGENCY.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restric-

tions 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. 78l(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. 5088. 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. 78o–5) is amended by adding at the end the following new subsection:

1 *"(h) EMERGENCY AUTHORITY.—The Sec-*
2 *retary may by order take any action with re-*
3 *spect to a matter or action subject to regula-*
4 *tion by the Secretary under this section, or the*
5 *rules of the Secretary thereunder, involving a*
6 *government security or a market therein (or*
7 *significant portion or segment of that market),*
8 *that the Commission may take under section*
9 *12(k)(2) of this title with respect to trans-*
10 *actions in securities (other than exempted se-*
11 *curities) or a market therein (or significant*
12 *portion or segment of that market).".*

13 *SEC. 5089. JOINT REPORT ON IMPLEMENTATION OF FINAN-*
14 *CIAL SYSTEM RESILIENCE RECOMMENDA-*
15 *TIONS.*

16 *(a) REPORT REQUIRED.—Not later than*
17 *April 30, 2006, the Board of Governors of the*
18 *Federal Reserve System, the Comptroller of the*
19 *Currency, and the Securities and Exchange*
20 *Commission shall prepare and submit to the*
21 *Committee on Financial Services of the House*
22 *of Representatives and the Committee on*
23 *Banking, Housing, and Urban Affairs of the*
24 *Senate a joint report on the efforts of the pri-*
25 *vate sector to implement the Interagency*

1 ***Paper on Sound Practices to Strengthen the***
2 ***Resilience of the U.S. Financial System.***
3 ***(b) CONTENTS OF REPORT.—The report re-***
4 ***quired by subsection (a) shall—***
5 ***(1) examine the efforts to date of cov-***
6 ***ered private sector financial services***
7 ***firms to implement enhanced business***
8 ***continuity plans;***
9 ***(2) examine the extent to which the***
10 ***implementation of business continuity***
11 ***plans has been done in a geographically***
12 ***dispersed manner, including an analysis***
13 ***of the extent to which such firms have lo-***
14 ***cated their main and backup facilities in***
15 ***separate electrical networks, in different***
16 ***watersheds, in independent transpor-***
17 ***tation systems, and using separate tele-***
18 ***communications centers;***
19 ***(3) examine the need to cover more fi-***
20 ***nancial services entities than those cov-***
21 ***ered by the Interagency Paper; and***
22 ***(4) recommend legislative and regu-***
23 ***latory changes that will—***
24 ***(A) expedite the effective imple-***
25 ***mentation of the Interagency Paper by***

1 *all covered financial services entities;*
2 *and*
3 *(B) maximize the effective imple-*
4 *mentation of business continuity plan-*
5 *ning by all participants in the finan-*
6 *cial services industry.*
7 *(c) CONFIDENTIALITY.—Any information*
8 *provided to the Federal Reserve Board, the*
9 *Comptroller of the Currency, or the Securities*
10 *and Exchange Commission for the purposes of*
11 *the preparation and submission of the report*
12 *required by subsection (a) shall be treated as*
13 *privileged and confidential. For purposes of*
14 *section 552 of title 5, United States Code, this*
15 *subsection shall be considered a statute de-*
16 *scribed in subsection (b)(3)(B) of such section*
17 *552.*
18 *(d) DEFINITION.—The Interagency Paper on*
19 *Sound Practices to Strengthen the Resilience*
20 *of the U.S. Financial System is the interagency*
21 *paper prepared by the Board of Governors of*
22 *the Federal Reserve System, the Comptroller of*
23 *the Currency, and the Securities and Ex-*
24 *change Commission that was announced in*
25 *the Federal Register on April 8, 2003.*

SEC. 5089A. PRIVATE SECTOR PREPAREDNESS.

It is the sense of the Congress that the insurance industry and credit-rating agencies, where relevant, should carefully consider a company's compliance with standards for private sector disaster and emergency preparedness in assessing insurability and creditworthiness, to ensure that private sector investment in disaster and emergency preparedness is appropriately encouraged.

SEC. 5089B. REPORT ON PUBLIC/PRIVATE PARTNERSHIPS.

Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing—

(1) information on the efforts the Department of the Treasury has made to encourage the formation of public/private partnerships to protect critical financial infrastructure and the type of support that the Department has provided to these partnerships; and

(2) recommendations for administrative or legislative action regarding these partnerships as the Secretary may determine to be appropriate.

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 im-

1 *pact of the proposed rule on individ-*
2 *uals.*
3 *"(b) FINAL PRIVACY IMPACT ASSESSMENT.—*
4 *"(1) IN GENERAL.—Whenever an agency*
5 *promulgates a final rule under section*
6 *553 of this title, after being required by*
7 *that section or any other law to publish a*
8 *general notice of proposed rulemaking, or*
9 *promulgates a final interpretative rule in-*
10 *volving the internal revenue laws of the*
11 *United States, and such rule or proposed*
12 *rulemaking pertains to the collection,*
13 *maintenance, use, or disclosure of person-*
14 *ally identifiable information from 10 or*
15 *more individuals, other than agencies, in-*
16 *strumentalities, or employees of the Fed-*
17 *eral government, the agency shall prepare*
18 *a final privacy impact assessment, signed*
19 *by the senior agency official with primary*
20 *responsibility for privacy policy.*
21 *"(2) CONTENTS.—Each final privacy*
22 *impact assessment required under this*
23 *subsection shall contain the following:*
24 *"(A) A description and analysis of*
25 *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 im-

pact 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).

1 *"(d) PROCEDURES FOR GATHERING COM-*
2 *MENTS.—When any rule is promulgated which*
3 *may have a significant privacy impact on indi-*
4 *viduals, or a privacy impact on a substantial*
5 *number of individuals, the head of the agency*
6 *promulgating the rule or the official of the*
7 *agency with statutory responsibility for the*
8 *promulgation of the rule shall assure that in-*
9 *dividuals have been given an opportunity to*
10 *participate in the rulemaking for the rule*
11 *through techniques such as—*
12 *"(1) the inclusion in an advance no-*
13 *tice of proposed rulemaking, if issued, of*
14 *a statement that the proposed rule may*
15 *have a significant privacy impact on indi-*
16 *viduals, or a privacy impact on a substan-*
17 *tial number of individuals;*
18 *"(2) the publication of a general no-*
19 *tice of proposed rulemaking in publica-*
20 *tions of national circulation likely to be*
21 *obtained by individuals;*
22 *"(3) the direct notification of inter-*
23 *ested individuals;*
24 *"(4) the conduct of open conferences*
25 *or public hearings concerning the rule for*

1 *individuals, including soliciting and re-*
2 *ceiving comments over computer net-*
3 *works; and*
4 *"(5) the adoption or modification of*
5 *agency procedural rules to reduce the cost*
6 *or complexity of participation in the rule-*
7 *making by individuals.*
8 *"(e) PERIODIC REVIEW OF RULES.—*
9 *"(1) IN GENERAL.—Each agency shall*
10 *carry out a periodic review of the rules*
11 *promulgated by the agency that have a*
12 *significant privacy impact on individuals,*
13 *or a privacy impact on a substantial num-*
14 *ber of individuals. Under such periodic*
15 *review, the agency shall determine, for*
16 *each such rule, whether the rule can be*
17 *amended or rescinded in a manner that*
18 *minimizes any such impact while remain-*
19 *ing in accordance with applicable stat-*
20 *utes. For each such determination, the*
21 *agency shall consider the following fac-*
22 *tors:*
23 *"(A) The continued need for the*
24 *rule.*

1 *"(B) The nature of complaints or*
2 *comments received from the public*
3 *concerning the rule.*
4 *"(C) The complexity of the rule.*
5 *"(D) The extent to which the rule*
6 *overlaps, duplicates, or conflicts with*
7 *other Federal rules, and, to the extent*
8 *feasible, with State and local govern-*
9 *mental rules.*
10 *"(E) The length of time since the*
11 *rule was last reviewed under this sub-*
12 *section.*
13 *"(F) The degree to which tech-*
14 *nology, economic conditions, or other*
15 *factors have changed in the area af-*
16 *fected by the rule since the rule was*
17 *last reviewed under this subsection.*
18 *"(2) PLAN REQUIRED.—Each agency*
19 *shall carry out the periodic review re-*
20 *quired by paragraph (1) in accordance*
21 *with a plan published by such agency in*
22 *the Federal Register. Each such plan*
23 *shall provide for the review under this*
24 *subsection of each rule promulgated by*
25 *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 com-

pliance 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.

1 *"(8) SAVINGS CLAUSE.—Nothing in this*
2 *subsection bars judicial review of any*
3 *other impact statement or similar assess-*
4 *ment required by any other law if judicial*
5 *review of such statement or assessment is*
6 *otherwise permitted by law.*
7 *"(g) DEFINITION.—For purposes of this sec-*
8 *tion, the term 'personally identifiable informa-*
9 *tion' means information that can be used to*
10 *identify an individual, including such individ-*
11 *ual's name, address, telephone number, photo-*
12 *graph, social security number or other identi-*
13 *fying information. It includes information*
14 *about such individual's medical or financial*
15 *condition.".*
16 *(c) PERIODIC REVIEW TRANSITION PROVI-*
17 *SIONS.—*
18 *(1) INITIAL PLAN.—For each agency, the*
19 *plan required by subsection (e) of section*
20 *553a of title 5, United States Code (as*
21 *added by subsection (a)), shall be pub-*
22 *lished not later than 180 days after the*
23 *date of the enactment of this Act.*
24 *(2) In the case of a rule promulgated*
25 *by an agency before the date of the enact-*

ment 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 reviewing 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

1 *information systems from unauthorized*
2 *access, use, disclosure, disruption, modi-*
3 *fication, or destruction in order to pro-*
4 *vide—*
5 *(A) integrity, which means guard-*
6 *ing against improper information*
7 *modification or destruction, and in-*
8 *cludes ensuring information non-*
9 *repudiation and authenticity;*
10 *(B) confidentially, which means*
11 *preserving authorized restrictions on*
12 *access and disclosure, including*
13 *means for protecting personal privacy*
14 *and proprietary information;*
15 *(C) availability, which means en-*
16 *suring timely and reliable access to*
17 *and use of that information; and*
18 *(D) authentication, which means*
19 *utilizing digital credentials to assure*
20 *the identity of users and validate*
21 *their access; and*
22 *(7) advising the head of the agency*
23 *and the Director of the Office of Manage-*
24 *ment and Budget on information security*

1 *and privacy issues pertaining to Federal*
2 *Government information systems.*

3 ***CHAPTER 2—MUTUAL AID AND***
4 ***LITIGATION MANAGEMENT***

5 ***SEC. 5101. SHORT TITLE.***

6 ***This chapter may be cited as the "Mutual***
7 ***Aid and Litigation Management Authoriza-***
8 ***tion Act of 2004".***

9 ***SEC. 5102. MUTUAL AID AUTHORIZED.***

10 ***(a) AUTHORIZATION TO ENTER INTO AGREE-***
11 ***MENTS.—***

12 ***(1) IN GENERAL.—The authorized rep-***
13 ***resentative of a State, locality, or the Fed-***
14 ***eral Government may enter into an inter-***
15 ***state mutual aid agreement or a mutual***
16 ***aid agreement with the Federal Govern-***
17 ***ment on behalf of the State, locality, or***
18 ***Federal Government under which, at the***
19 ***request of any party to the agreement, the***
20 ***other party to the agreement may—***

21 ***(A) provide law enforcement, fire,***
22 ***rescue, emergency health and medical***
23 ***services, transportation, communica-***
24 ***tions, public works and engineering,***
25 ***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 3, 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.

1 ***SEC. 5103. LITIGATION MANAGEMENT AGREEMENTS.***

2 ***(a) AUTHORIZATION TO ENTER INTO LITIGA-***
3 ***TION MANAGEMENT AGREEMENTS.—The author-***
4 ***ized representative of a State or locality may***
5 ***enter into a litigation management agreement***
6 ***on behalf of the State or locality. Such litiga-***
7 ***tion management agreements may provide***
8 ***that all claims against such Emergency Re-***
9 ***sponse Providers arising out of, relating to, or***
10 ***resulting from an act of terrorism when Emer-***
11 ***gency Response Providers from more than 1***
12 ***State have acted in defense against, in re-***
13 ***sponse to, or recovery from such act shall be***
14 ***governed by the following provisions.***

15 ***(b) FEDERAL CAUSE OF ACTION.—***

16 ***(1) IN GENERAL.—There shall exist a***
17 ***Federal cause of action for claims against***
18 ***Emergency Response Providers arising out***
19 ***of, relating to, or resulting from an act of***
20 ***terrorism when Emergency Response Pro-***
21 ***viders from more than 1 State have acted***
22 ***in defense against, in response to, or re-***
23 ***covery from such act. As determined by***
24 ***the parties to a litigation management***
25 ***agreement, the substantive law for deci-***
26 ***sion 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.

1 *(3) SPECIAL RULES.—In an action*
2 *brought for damages that is governed by a*
3 *litigation management agreement, the fol-*
4 *lowing provisions apply:*
5 *(A) PUNITIVE DAMAGES.—No puni-*
6 *tive damages intended to punish or*
7 *deter, exemplary damages, or other*
8 *damages not intended to compensate*
9 *a plaintiff for actual losses may be*
10 *awarded, nor shall any party be liable*
11 *for interest prior to the judgment.*
12 *(B) COLLATERAL SOURCES.—Any re-*
13 *covery by a plaintiff in an action gov-*
14 *erned by a litigation management*
15 *agreement shall be reduced by the*
16 *amount of collateral source com-*
17 *pensation, if any, that the plaintiff*
18 *has received or is entitled to receive as*
19 *a result of such acts of terrorism.*
20 *(4) EXCLUSIONS.—Nothing in this sec-*
21 *tion shall in any way limit the ability of*
22 *any person to seek any form of recovery*
23 *from any person, government, or other en-*
24 *tity 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 per-

sonnel 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);

1 *(C) develop, in consultation with*
2 *other appropriate Federal agencies*
3 *and State and local authorities, ap-*
4 *propriate minimum capabilities for*
5 *communications interoperability for*
6 *Federal, State, and local public safety*
7 *agencies;*
8 *(D) accelerate, in consultation*
9 *with other Federal agencies, includ-*
10 *ing the National Institute of Stand-*
11 *ards and Technology, the private sec-*
12 *tor, and nationally recognized stand-*
13 *ards organizations as appropriate,*
14 *the development of national voluntary*
15 *consensus standards for public safety*
16 *interoperable communications;*
17 *(E) encourage the development*
18 *and implementation of flexible and*
19 *open architectures, with appropriate*
20 *levels of security, for short-term and*
21 *long-term solutions to public safety*
22 *communications interoperability;*
23 *(F) assist other Federal agencies*
24 *in identifying priorities for research,*
25 *development, and testing and evalua-*

tion 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

1 *maintained by the Secretary for purposes*
2 *of carrying out this subsection.*
3 *(b) REPORT.—Not later than 120 days after*
4 *the date of the enactment of this Act, the Sec-*
5 *retary shall report to the Congress on Depart-*
6 *ment of Homeland Security plans for accel-*
7 *erating the development of national voluntary*
8 *consensus standards for public safety inter-*
9 *operable communications, a schedule of mile-*
10 *stones for such development, and achieve-*
11 *ments of such development.*
12 *(c) RAPID INTEROPERABLE COMMUNICATIONS*
13 *CAPABILITIES FOR HIGH RISK JURISDICTIONS.—*
14 *The Secretary, in consultation with other rel-*
15 *evant Federal, State, and local government*
16 *agencies, shall provide technical, training,*
17 *and other assistance as appropriate to support*
18 *the rapid establishment of consistent, secure,*
19 *and effective interoperable communications*
20 *capabilities for emergency response providers*
21 *in jurisdictions determined by the Secretary to*
22 *be at consistently high levels of risk of terrorist*
23 *attack.*
24 *(d) DEFINITIONS.—In this section:*

1 *(1) INTEROPERABLE COMMUNICATIONS.—*
2 *The term "interoperable communications"*
3 *means the ability of emergency response*
4 *providers and relevant Federal, State,*
5 *and local government agencies to commu-*
6 *nicate with each other as necessary,*
7 *through a dedicated public safety network*
8 *utilizing information technology systems*
9 *and radio communications systems, and*
10 *to exchange voice, data, or video with one*
11 *another on demand, in real time, as nec-*
12 *essary.*
13 *(2) EMERGENCY RESPONSE PROVIDERS.—*
14 *The term "emergency response providers"*
15 *has the meaning that term has under sec-*
16 *tion 2 of the Homeland Security Act of*
17 *2002 (6 U.S.C. 101)*
18 *(e) CLARIFICATION OF RESPONSIBILITY FOR*
19 *INTEROPERABLE COMMUNICATIONS.—*
20 *(1) UNDER SECRETARY FOR EMERGENCY*
21 *PREPAREDNESS AND RESPONSE.—Section*
22 *502(7) of the Homeland Security Act of*
23 *2002 (6 U.S.C. 312(7)) is amended—*
24 *(A) by striking "developing com-*
25 *prehensive 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.

[SECTION 1. SHORT TITLE.

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

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[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 Presi-

dent, 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 Pro-

gram 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 sub-

section 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 appli-

cations 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 In-

telligence 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 In-

telligence 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 gov-

ernment 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 Govern-

ment, 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 Manage-

ment 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 Direc-

tor 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 con-

ducting 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 strik-

ing 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 rec-

ommendation, 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 intel-

ligence 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 dis-

seminate 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 counter-

terrorism 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.—There is hereby established a Joint Intelligence Community Council.

[(b) FUNCTIONS.—(1) The Joint Intelligence Community Council shall provide ad-

vice 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, under-

standing, 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 scholar-

ship 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 train-

ing 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 in-

terests 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 ele-

ment 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 ca-

pability 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 policy-making 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 Govern-

ment 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 lan-

guages 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 addi-

tion 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 Vol-

untary 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)).

[(Q) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).

[(R) Section 115(b) (50 U.S.C. 404j(b)).

[(S) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).

[(T) Section 116(a) (50 U.S.C. 404k(a)).

[(U) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).

[(V) Section 303(a) (50 U.S.C. 405(a)), both places it appears.

[(W) Section 501(d) (50 U.S.C. 413(d)).

[(X) Section 502(a) (50 U.S.C. 413a(a)).

[(Y) Section 502(c) (50 U.S.C. 413a(c)).

[(Z) Section 503(b) (50 U.S.C. 413b(b)).

[(AA) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).

[(BB) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

[(CC) Section 506A(a)(1) (50 U.S.C. 415a–1(a)(1)).

[(DD) Section 603(a) (50 U.S.C. 423(a)).

[(EE) Section 702(a)(1) (50 U.S.C. 432(a)(1)).

[(FF) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).

[(GG) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.

[(HH) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).

[(II) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).

[(JJ) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.

[(KK) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).

[(LL) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).

[(MM) Section 704(g)(1)) (50 U.S.C. 432b(g)(1)), both places it appears.

[(NN) Section 1001(a) (50 U.S.C. 441g(a)).

[(OO) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).

[(PP) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).

[(QQ) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).

[(RR) 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)).

[(D) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.

[(E) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).

[(F) 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 provi-

sions 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).

[(B) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).

[(C) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).

[(D) 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 Cen-

tral 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 Dep-

uty Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Director 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 in-

serting "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 Di-

rector 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 trans-

ferred 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 sub-

section 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 organization (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 develop-

ment, 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 non-proliferation 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 morale 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 ma-

terials 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 cen-

ters, 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 offi-

cers 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 par-

ticipating 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 pri-

vate 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, destruc-

tion 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 reason-

able 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 In-

vestigation, 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 pro-

tect 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 Administra-

tion), 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 sub-

paragraph (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 abil-

ity 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 inflight 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 Se-

curity 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 Fed-

eral 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 technology 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 mate-

rials 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 trans-

ported 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 equip-

ment 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 security 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 re-

lief 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 information 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 imple-

mented 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 in-

terim 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 insti-

tutionalize 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 enforce-

ment agencies to ensure the necessary sharing of information for counter-terrorism 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.

[(f) 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.

[(g) 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 Com-

mission 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 multi-jurisdictional 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 Sec-

retary 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 subpara-

graph (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 pa-

pers 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 interstate 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 sec-

tion 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 pro-

tection 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 derivative 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 legis-

lative 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 effi-

cient 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 For-

eign 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 fal-

sified 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 For-

eign 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 proc-

essing 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 implementa-

tion 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 En-

forcement 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 Coordi-

nator 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 Sec-

retary 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 tech-

nologies 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 dis-

rupt 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 nongovern-

mental 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 di-

rectly 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 pro-

duction 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 re-

view 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 profes-

sional 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 in-

clude 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 precepts 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 Gen-

eral 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 conduct 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 Sec-

retary 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 be-

ginning 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 par-

ticipation 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 Dep-

uty 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 in-

come 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 (Public Law 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 cli-

mate 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 dis-

closed 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 re-

sponse 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 con-

tinue 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 Nation-

ality 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, time-frames 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 responsibil-

ities 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 non-

lethal 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 ex-

amination 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 ap-

propriate 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 NON-PROLIFERATION 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 con-

gressional 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 safe-

ty 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 policy-

making 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 prepared-

ness 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, preparedness, 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 home-

land 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 geo-

graphic 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 As-

sistance 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 Di-

rector 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 fea-

sible, 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 rep-

resentation 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 De-

partments 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 home-

land 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 Gov-

ernor 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 ap-

plication 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 equip-

ment 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 en-

hance 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 enact-

ment 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 bene-

ficiary 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 per-

cent 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 Re-

sponse 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 insert-

ing "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.—Section 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 Sec-

retary 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, specifi-

cally 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 deter-

mined 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 counter-narcotics 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 Sub-

committee 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 Minor-

ity 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, mes-

sages, 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 infor-

mation 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 proce-

dures 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 re-

quest 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 de-

posit 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 un-

less 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 Gov-

ernment 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 para-

graphs (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 cer-

tified 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 indi-

vidual, 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 in-

terested 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 Of-

fice 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 in-

dividual 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 indi-

vidual 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 employ-

ee'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 indi-

vidual 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 investiga-

tions 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 adjudica-

tive 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 informa-

tion 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 in-

auguration 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 com-

pletion 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 af-

fected 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 in-

formation 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 reviewing 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 person-

ally 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 guide-

lines 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, proce-

dures, 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 Govern-

ment 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 mu-

tual 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 agree-

ment 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 re-

ceipt 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.]

Union Calendar No. 453

108TH CONGRESS
2D SESSION

H. R. 10

[Report No. 108–724, Parts I, II, III, IV, and V]

A BILL

To provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes.

OCTOBER 4, 2004

Reported from the Permanent Select Committee on Intelligence with an amendment; Reported from the Committee on Armed Services with amendments; Reported from the Committee on Financial Services with an amendment; Referral to the Committees on Education and the Workforce, Energy and Commerce, Government Reform, International Relations, the Judiciary, Rules, Science, Transportation and Infrastructure, Ways and Means, and the Select Committee on Homeland Security extended for a period ending not later than October 5, 2004

OCTOBER 5, 2004

Reported from the Committee on Government Reform with an amendment; Reported from the Committee on the Judiciary with an amendment; Committees on Education and the Workforce, Energy and Commerce, International Relations, Rules, Science, Transportation and Infrastructure, Ways and Means, and the Select Committee on Homeland Security discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed