

Calendar No. 730118TH CONGRESS
2^D SESSION**S. 2315****[Report No. 118–310]**

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

IN THE SENATE OF THE UNITED STATES

JULY 13, 2023

Mr. CRAPO (for himself, Mrs. SHAHEEN, Mr. RISCH, Mrs. BLACKBURN, Mr. THUNE, Mr. CASSIDY, Mr. ROUNDS, Ms. WARREN, Mr. PADILLA, Ms. ROSEN, Mr. KING, Ms. DUCKWORTH, Ms. HASSAN, Mr. OSSOFF, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 19 (legislative day, DECEMBER 16), 2024

Reported by Mr. PETERS, with an amendment

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

9 (1) A vast number of records relating to miss-
10 ing Armed Forces and civilian personnel have not
11 been identified, located, or transferred to the Na-
12 tional Archives following review and declassification.
13 Only in the rarest cases is there any legitimate need
14 for continued protection of records pertaining to
15 missing Armed Forces and civilian personnel who
16 have been missing for decades.

17 (2) There has been insufficient priority placed
18 on identifying, locating, reviewing, or declassifying
19 records relating to missing Armed Forces and civil-
20 ian personnel and then transferring the records to
21 the National Archives for public access.

22 (3) Mandates for declassification set forth in
23 multiple Executive orders have been broadly written,
24 loosely interpreted, and often ignored by Federal

1 agencies in possession and control of records related
2 to missing Armed Forces and civilian personnel.

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

7 (5) The interest, desire, workforce, and funding
8 of Federal agencies to assemble, review, and declas-
9 sify records relating to missing Armed Forces and
10 civilian personnel have been lacking.

11 (6) All records of the Federal Government re-
12 lating to missing Armed Forces and civilian per-
13 sonnel should be preserved for historical and govern-
14 mental purposes and for public research.

15 (7) All records of the Federal Government re-
16 lating to missing Armed Forces and civilian per-
17 sonnel should carry a presumption of declassifica-
18 tion, and all such records should be disclosed under
19 this Act to enable the fullest possible accounting for
20 missing Armed Forces and civilian personnel.

21 (8) Legislation is necessary to create an en-
22 forceable, independent, and accountable process for
23 the public disclosure of records relating to missing
24 Armed Forces and civilian personnel.

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

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

8 (1) to provide for the creation of the Missing
9 Armed Forces and Civilian Personnel Records Col-
10 lection at the National Archives; and

11 (2) to require the expeditious public trans-
12 mission to the Archivist and public disclosure of
13 missing Armed Forces and civilian personnel
14 records, subject to narrow exceptions, as set forth in
15 this Act.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

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

20 (2) COLLECTION.—The term “Collection”
21 means the Missing Armed Forces and Civilian Per-
22 sonnel Records Collection established under section
23 4(a).

24 (3) EXECUTIVE AGENCY.—The term “Executive
25 agency” —

1 (A) means an agency, as defined in section
2 552(f) of title 5, United States Code;

3 (B) includes any Executive department,
4 military department, Government corporation,
5 Government controlled corporation, or other es-
6 tablishment in the executive branch of the Fed-
7 eral Government, including the Executive Office
8 of the President, any branch of the Armed
9 Forces, and any independent regulatory agency;
10 and

11 (C) does not include any non-appropriated
12 agency, department, corporation, or establish-
13 ment.

14 (4) EXECUTIVE BRANCH MISSING ARMED
15 FORCES AND CIVILIAN PERSONNEL RECORD.—The
16 term “executive branch missing Armed Forces and
17 civilian personnel record” means a missing Armed
18 Forces and civilian personnel record of an Executive
19 agency, or information contained in such a missing
20 Armed Forces and civilian personnel record obtained
21 by or developed within the executive branch of the
22 Federal Government.

23 (5) GOVERNMENT OFFICE.—The term “Govern-
24 ment office” means an Executive agency, the Li-
25 brary of Congress, or the National Archives.

1 (6) MISSING ARMED FORCES AND CIVILIAN
2 PERSONNEL.—

3 (A) DEFINITION.—The term “missing
4 Armed Forces and civilian personnel” means
5 one or more missing persons; and

6 (B) INCLUSIONS.—The term “missing
7 Armed Forces and civilian personnel” includes
8 an individual who was a missing person and
9 whose status was later changed to “missing and
10 presumed dead”.

11 (7) MISSING ARMED FORCES AND CIVILIAN
12 PERSONNEL RECORD.—The term “missing Armed
13 Forces and civilian personnel record” means a
14 record that relates, directly or indirectly, to the loss,
15 fate, or status of missing Armed Forces and civilian
16 personnel that—

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

20 (i) any Government office;

21 (ii) any Presidential library; or

22 (iii) any of the Armed Forces; and

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

- 1 (i) beginning on December 7, 1941;
2 and
3 (ii) ending on the date of enactment
4 of this Act.

5 (8) MISSING PERSON.—The term “missing per-
6 son” means—

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

10 (B) any other civilian employee of the Fed-
11 eral Government or an employee of a contractor
12 of the Federal Government who serves in direct
13 support of, or accompanies, the Armed Forces
14 in the field under orders and who is in a miss-
15 ing status (as that term is defined in paragraph
16 (2) of such section 1513).

17 (9) NATIONAL ARCHIVES.—The term “National
18 Archives”—

19 (A) means the National Archives and
20 Records Administration; and

21 (B) includes any component of the Na-
22 tional Archives and Records Administration (in-
23 cluding Presidential archival depositories estab-
24 lished under section 2112 of title 44, United
25 States Code).

1 (10) OFFICIAL INVESTIGATION.—The term “of-
2 ficial investigation” means a review, briefing, in-
3 quiry, or hearing relating to missing Armed Forces
4 and civilian personnel conducted by a Presidential
5 commission, committee of Congress, or agency, re-
6 gardless of whether it is conducted independently, at
7 the request of any Presidential commission or com-
8 mittee of Congress, or at the request of any official
9 of the Federal Government.

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

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

1 (b) REGULATIONS.—Not later than 90 days after the
2 date of the swearing in of the Board members, the Review
3 Board shall promulgate rules to establish guidelines and
4 processes for the disclosure of records contained in the
5 Collection.

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

11 (a) IN GENERAL.—

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

16 (A) identify and locate any missing Armed
17 Forces and civilian personnel records in the
18 custody, possession, or control of the Govern-
19 ment office, including intelligence reports, con-
20 gressional inquiries, memoranda to or from the
21 White House and other Federal departments
22 and agencies, Prisoner of War (POW)
23 debriefings, live sighting reports, documents re-
24 lating to POW camps, movement of POWs, ex-
25 ploitation of POWs, experimentation on POWs,

1 or status changes from Missing in Action
2 (MLA) to Killed in Action (KIA); and

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

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

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

18 (B) whether a copy of any missing Armed
19 Forces and civilian personnel record has not
20 been transmitted to the Archivist.

21 (3) PRESERVATION.—No missing Armed Forces
22 and civilian personnel record shall be destroyed, at-
23 tered, or mutilated in any way.

24 (4) EFFECT OF PREVIOUS DISCLOSURE.—Infor-
25 mation that was made available or disclosed to the

1 public before the date of enactment of this Act in a
2 missing Armed Forces and civilian personnel record
3 may not be withheld, redacted, postponed for public
4 disclosure, or reclassified.

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

21 (b) REVIEW.—

22 (1) IN GENERAL.—Except as provided under
23 paragraph (5), not later than 180 days after con-
24 firmation of the initial members of the Missing
25 Armed Forces and Civilian Personnel Records Re-

1 view Board, each Government office shall, in accord-
2 ance with the criteria and acceptable formats estab-
3 lished by the Archivist—

4 (A) identify, locate, copy, and review each
5 missing Armed Forces and civilian personnel
6 record in the custody, possession, or control of
7 the Government office for transmission to the
8 Archivist and disclosure to the public or, if
9 needed, review by the Review Board; and

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

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

15 (3) NATIONAL ARCHIVES RECORDS.—Not later
16 than 180 days after confirmation of the initial mem-
17 bers of the Missing Armed Forces and Civilian Per-
18 sonnel Records Review Board, the Archivist shall—

19 (A) locate and identify all missing Armed
20 Forces and civilian personnel records in the
21 custody of the National Archives as of the date
22 of enactment of this Act that remain classified,
23 in whole or in part;

1 (B) notify a Government office if the Ar-
2 chivist locates and identifies a record of the
3 Government office under subparagraph (A); and

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

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

18 (5) EXEMPTIONS.—

19 (A) DEPARTMENT OF DEFENSE POW/MIA
20 ACCOUNTING AGENCY.—The Defense POW/
21 MIA Accounting Agency (DPAA) is exempt
22 from the requirement under this subsection to
23 declassify and transmit to the Archivist docu-
24 ments in its custody or control that pertain to
25 a specific case or cases that DPAA is actively

1 investigating or developing for the purpose of
2 locating, disinterring, or identifying a missing
3 member of the Armed Forces.

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

15 (c) TRANSMISSION TO THE NATIONAL ARCHIVES.—

16 Each Government office shall—

17 (1) not later than 180 days after confirmation
18 of the initial members of the Missing Armed Forces
19 and Civilian Personnel Records Review Board, com-
20 mence transmission to the Archivist of copies of the
21 missing Armed Forces and civilian personnel records
22 in the custody, possession, or control of the Govern-
23 ment office; and

24 (2) not later than 1 year after confirmation of
25 the initial members of the Missing Armed Forces

1 and Civilian Personnel Records Review Board, com-
 2 plete transmission to the Archivist of copies of all
 3 missing Armed Forces and civilian personnel records
 4 in the possession or control of the Government of-
 5 fice.

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

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

14 (A)(i) periodically, but not less than every
 15 5 years, after the date on which the Review
 16 Board terminates under section 7(o); and

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

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

20 (2) CONTENTS.—

21 (A) IN GENERAL.—A periodic review of a
 22 missing Armed Forces and civilian personnel
 23 record, or information within a missing Armed
 24 Forces and civilian personnel record, by the
 25 originating body shall address the public diselo-

1 sure of the missing Armed Forces and civilian
2 personnel record under the standards under
3 this Act.

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

18 (C) SCOPE.—The periodic review of post-
19 poned missing Armed Forces and civilian per-
20 sonnel records, or information within a missing
21 Armed Forces and civilian personnel record,
22 shall serve the purpose stated in section
23 2(b)(2), to provide expeditious public disclosure
24 of missing Armed Forces and civilian personnel
25 records, to the fullest extent possible, subject

1 only to the grounds for postponement of disclosure under section 6.

2
3 (D) DISCLOSURE ABSENT CERTIFICATION
4 BY PRESIDENT.—Not later than 10 years after
5 confirmation of the initial members of the Missing
6 Armed Forces and Civilian Personnel
7 Records Review Board, all missing Armed
8 Forces and civilian personnel records, and information
9 within a missing Armed Forces and
10 civilian personnel record, shall be publicly disclosed
11 in full, and available in the Collection,
12 unless—

13 (i) the head of the originating body,
14 Executive agency, or other Government office
15 recommends in writing that continued
16 postponement is necessary;

17 (ii) the written recommendation described
18 in clause (i)—

19 (I) is provided to the Archivist in
20 unclassified and publicly releasable
21 form not later than 180 days before
22 the date that is 10 years after confirmation
23 of the initial members of the
24 Missing Armed Forces and Civilian
25 Personnel Records Review Board; and

1 (H) includes—

2 (aa) a justification of the
3 recommendation to postpone dis-
4 closure with clear and convincing
5 evidence that the identifiable
6 harm is of such gravity that it
7 outweighs the public interest in
8 disclosure; and

9 (bb) a recommended speci-
10 fied time at which or a specified
11 occurrence following which the
12 material may be appropriately
13 disclosed to the public under this
14 Act;

15 (iii) the Archivist transmits all rec-
16 ommended postponements and the rec-
17 ommendation of the Archivist to the Presi-
18 dent not later than 90 days before the date
19 that is 10 years after the date of confirma-
20 tion of the initial members of the Missing
21 Armed Forces and Civilian Personnel
22 Records Review Board; and

23 (iv) the President transmits to the Ar-
24 chivist a certification indicating that con-
25 tinued postponement is necessary and the

1 identifiable harm, as demonstrated by clear
2 and convincing evidence, is of such gravity
3 that it outweighs the public interest in dis-
4 closure not later than the date that is 10
5 years after confirmation of the initial
6 members of the Missing Armed Forces and
7 Civilian Personnel Records Review Board.

8 **SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
9 **SURE OF RECORDS.**

10 (a) IN GENERAL.—Disclosure to the public of a miss-
11 ing Armed Forces and civilian personnel record or par-
12 ticular information in a missing Armed Forces and civilian
13 personnel record created after the date that is 25 years
14 before the date of the review of the missing Armed Forces
15 and civilian personnel record by the Archivist may be post-
16 poned subject to the limitations under this Act only—

17 (1) if it pertains to—

18 (A) military plans, weapons systems, or op-
19 erations;

20 (B) foreign government information;

21 (C) intelligence activities (including covert
22 action); intelligence sources or methods; or
23 cryptology;

1 (D) foreign relations or foreign activities of
2 the United States, including confidential
3 sources;

4 (E) scientific, technological, or economic
5 matters relating to the national security;

6 (F) United States Government programs
7 for safeguarding nuclear materials or facilities;

8 (G) vulnerabilities or capabilities of sys-
9 tems, installations, infrastructures, projects,
10 plans, or protection services relating to the na-
11 tional security; or

12 (H) the development, production, or use of
13 weapons of mass destruction; and

14 (2) the threat posed by the public disclosure of
15 the missing Armed Forces and civilian personnel
16 record or information is of such gravity that it out-
17 weighs the public interest in disclosure.

18 (b) OLDER RECORDS.—Disclosure to the public of a
19 missing Armed Forces and civilian personnel record or
20 particular information in a missing Armed Forces and ei-
21 vilian personnel record created on or before the date that
22 is 25 years before the date of the review of the missing
23 Armed Forces and civilian personnel record by the Archi-
24 vist may be postponed subject to the limitations under this

1 Act only if, as demonstrated by clear and convincing evi-
2 dence—

3 (1) the release of the information would be ex-
4 pected to—

5 (A) reveal the identity of a confidential
6 human source; a human intelligence source; a
7 relationship with an intelligence or security
8 service of a foreign government or international
9 organization; or a nonhuman intelligence
10 source; or impair the effectiveness of an intel-
11 ligence method currently in use; available for
12 use; or under development;

13 (B) reveal information that would impair
14 United States cryptologic systems or activities;

15 (C) reveal formally named or numbered
16 United States military war plans that remain in
17 effect; or reveal operational or tactical elements
18 of prior plans that are contained in such active
19 plans; or

20 (D) reveal information, including foreign
21 government information, that would cause seri-
22 ous harm to relations between the United
23 States and a foreign government, or to ongoing
24 diplomatic activities of the United States; and

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

5 (e) EXCEPTION.—Regardless of the date on which a
6 missing Armed Forces and civilian personnel record was
7 created, disclosure to the public of information in the
8 missing Armed Forces and civilian personnel record may
9 be postponed if—

10 (1) the public disclosure of the information
11 would reveal the name or identity of a living person
12 who provided confidential information to the United
13 States and would pose a substantial risk of harm to
14 that person;

15 (2) the public disclosure of the information
16 could reasonably be expected to constitute an unwar-
17 ranted invasion of personal privacy, and that inva-
18 sion of privacy is so substantial that it outweighs the
19 public interest;

20 (3) the public disclosure of the information
21 could reasonably be expected to cause harm to the
22 methods currently in use or available for use by
23 members of the Armed Forces to survive, evade, re-
24 sist, or escape; or

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

3 **SEC. 7. ESTABLISHMENT AND POWERS OF THE MISSING**
4 **ARMED FORCES AND CIVILIAN PERSONNEL**
5 **RECORDS REVIEW BOARD.**

6 (a) **ESTABLISHMENT.**—There is established as an
7 independent establishment in the executive branch a board
8 to be known as the “Missing Armed Forces and Civilian
9 Personnel Records Review Board”.

10 (b) **MEMBERSHIP.**—

11 (1) **APPOINTMENTS.**—The President shall ap-
12 point, by and with the advice and consent of the
13 Senate, 5 individuals to serve as a member of the
14 Review Board to ensure and facilitate the review,
15 transmission to the Archivist, and public disclosure
16 of missing Armed Forces and civilian personnel
17 records.

18 (2) **QUALIFICATIONS.**—The President shall ap-
19 point individuals to serve as members of the Review
20 Board—

21 (A) without regard to political affiliation;

22 (B) who are citizens of the United States
23 of integrity and impartiality;

24 (C) who are not an employee of an Execu-
25 tive agency on the date of the appointment;

1 (D) who have high national professional
2 reputation in their fields who are capable of ex-
3 ercising the independent and objective judgment
4 necessary to the fulfillment of their role in en-
5 suring and facilitating the identification, loca-
6 tion, review, transmission to the Archivist, and
7 public disclosure of missing Armed Forces and
8 civilian personnel records;

9 (E) who possess an appreciation of the
10 value of missing Armed Forces and civilian per-
11 sonnel records to scholars, the Federal Govern-
12 ment, and the public, particularly families of
13 missing Armed Forces and civilian personnel;

14 (F) not less than 1 of whom is a profes-
15 sional historian; and

16 (G) not less than 1 of whom is an attor-
17 ney.

18 (3) DEADLINES.—

19 (A) IN GENERAL.—Not later than 60 days
20 after the date of enactment of this Act, the
21 President shall submit nominations for all
22 members of the Review Board.

23 (B) CONFIRMATION REJECTED.—If the
24 Senate votes not to confirm a nomination to
25 serve as a member of the Review Board, not

1 later than 90 days after the date of the vote the
2 President shall submit the nomination of an ad-
3 ditional individual to serve as a member of the
4 Review Board.

5 (4) CONSULTATION.—The President shall make
6 nominations to the Review Board after considering
7 individuals recommended by the American Historical
8 Association, the Organization of American Histo-
9 rians, the Society of American Archivists, the Amer-
10 ican Bar Association, veterans' organizations, and
11 organizations representing families of missing
12 Armed Forces and civilian personnel.

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

20 (d) CONFIRMATION.—

21 (1) HEARINGS.—Not later than 30 days on
22 which the Senate is in session after the date on
23 which not less than 3 individuals have been nomi-
24 nated to serve as members of the Review Board, the
25 Committee on Homeland Security and Governmental

1 Affairs of the Senate shall hold confirmation hear-
2 ings on the nominations.

3 ~~(2) COMMITTEE VOTE.~~—Not later than 14 days
4 on which the Senate is in session after the date on
5 which the Committee on Homeland Security and
6 Governmental Affairs holds a confirmation hearing
7 on the nomination of an individual to serve as a
8 member of the Review Board, the committee shall
9 vote on the nomination and report the results to the
10 full Senate immediately.

11 ~~(3) SENATE VOTE.~~—Not later than 14 days on
12 which the Senate is in session after the date on
13 which the Committee on Homeland Security and
14 Governmental Affairs reports the results of a vote on
15 a nomination of an individual to serve as a member
16 of the Review Board, the Senate shall vote on the
17 confirmation of the nominee.

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

22 ~~(f) CHAIRPERSON.~~—The members of the Review
23 Board shall elect a member as Chairperson at the initial
24 meeting of the Review Board.

25 ~~(g) REMOVAL OF REVIEW BOARD MEMBER.~~—

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

4 (A) by impeachment by Congress; or

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

10 (2) JUDICIAL REVIEW.—

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

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

19 (h) COMPENSATION OF MEMBERS.—

20 (1) BASIC PAY.—A member of the Review
21 Board shall be compensated at a rate equal to the
22 daily equivalent of the annual rate of basic pay pre-
23 scribed for level IV of the Executive Schedule under
24 section 5315 of title 5, United States Code, for each
25 day (including travel time) during which the member

1 is engaged in the performance of the duties of the
2 Review Board.

3 (2) TRAVEL EXPENSES.—A member of the Re-
4 view Board shall be allowed reasonable travel ex-
5 penses, including per diem in lieu of subsistence, at
6 rates for employees of agencies under subchapter I
7 of chapter 57 of title 5, United States Code, while
8 away from the member's home or regular place of
9 business in the performance of services for the Re-
10 view Board.

11 (i) DUTIES OF THE REVIEW BOARD.—

12 (1) IN GENERAL.—The Review Board shall con-
13 sider and render a decision on a determination by a
14 Government office to seek to postpone the disclosure
15 of a missing Armed Forces and civilian personnel
16 record, in whole or in part.

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

20 (A) whether a record constitutes a missing
21 Armed Forces and civilian personnel record;
22 and

23 (B) whether a missing Armed Forces and
24 civilian personnel record, or particular informa-
25 tion in a missing Armed Forces and civilian

1 personnel record, qualifies for postponement of
2 disclosure under this Act.

3 (j) **POWERS.**—The Review Board shall have the au-
4 thority to act in a manner prescribed under this Act, in-
5 cluding authority to—

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

9 (2) direct Government offices to transmit to the
10 Archivist substitutes and summaries of missing
11 Armed Forces and civilian personnel records that
12 can be publicly disclosed to the fullest extent for any
13 missing Armed Forces and civilian personnel record
14 that is proposed for postponement in full or that is
15 substantially redacted;

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

19 (4) direct a Government office to make avail-
20 able to the Review Board, and if necessary inves-
21 tigate the facts surrounding, additional information,
22 records, or testimony from individuals, which the
23 Review Board has reason to believe is required to
24 fulfill its functions and responsibilities under this
25 Act;

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

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

11 (7) require any Government office to account in
12 writing for the destruction of any records relating to
13 the loss, fate, or status of missing Armed Forces
14 and civilian personnel;

15 (8) receive information from the public regard-
16 ing the identification and public disclosure of miss-
17 ing Armed Forces and civilian personnel records;
18 and

19 (9) make a final determination regarding
20 whether a missing Armed Forces and civilian per-
21 sonnel record will be disclosed to the public or dis-
22 closure of the missing Armed Forces and civilian
23 personnel record to the public will be postponed, not-
24 withstanding the determination of an Executive
25 agency.

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

4 (l) OVERSIGHT.—

5 (1) IN GENERAL.—The Committee on Home-
 6 land Security and Governmental Affairs of the Sen-
 7 ate and the Committee on Oversight and Reform of
 8 the House of Representatives shall have—

9 (A) continuing oversight jurisdiction with
 10 respect to the official conduct of the Review
 11 Board and the disposition of postponed records
 12 after termination of the Review Board; and

13 (B) upon request, access to any records
 14 held or created by the Review Board.

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

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

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

23 (o) TERMINATION AND WINDING UP.—

24 (1) IN GENERAL.—Two years after the date of
 25 enactment of this Act, the Review Board shall, by

1 majority vote, determine whether all Government of-
2 fices have complied with the obligations, mandates,
3 and directives under this Act.

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

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

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

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

21 (a) EXECUTIVE DIRECTOR.—

22 (1) IN GENERAL.—Not later than 45 days after
23 the initial meeting of the Review Board, the Review
24 Board shall appoint an individual to the position of
25 Executive Director.

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

4 (A) shall be a citizen of the United States
5 of integrity and impartiality;

6 (B) shall be appointed without regard to
7 political affiliation; and

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

10 (3) SECURITY CLEARANCE.—

11 (A) LIMIT ON APPOINTMENT.—The Review
12 Board shall not appoint an individual as Execu-
13 tive Director until after the date on which the
14 individual qualifies for the necessary security
15 clearance.

16 (B) EXPEDITED PROVISION.—The appro-
17 priate departments, agencies, and elements of
18 the executive branch of the Federal Government
19 shall cooperate to ensure that an application by
20 an individual nominated to be Executive Direc-
21 tor, seeking security clearances necessary to
22 carry out the duties of the Executive Director,
23 is expeditiously reviewed and granted or denied.

24 (4) DUTIES.—The Executive Director shall—

1 (A) serve as principal liaison to Govern-
2 ment offices;

3 (B) be responsible for the administration
4 and coordination of the review of records by the
5 Review Board;

6 (C) be responsible for the administration
7 of all official activities conducted by the Review
8 Board; and

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

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

14 (b) STAFF.—

15 (1) IN GENERAL.—The Review Board may, in
16 accordance with the civil service laws, but without
17 regard to civil service law and regulation for com-
18 petitive service as defined in subchapter I of chapter
19 33 of title 5, United States Code, appoint and termi-
20 nate additional employees as are necessary to enable
21 the Review Board and the Executive Director to per-
22 form their duties under this Act.

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

1 (A) shall be a citizen of the United States
2 of integrity and impartiality; and

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

7 ~~(3) SECURITY CLEARANCE.—~~

8 (A) LIMIT ON APPOINTMENT.—The Review
9 Board shall not appoint an individual as an em-
10 ployee of the Review Board until after the date
11 on which the individual qualifies for the nec-
12 essary security clearance.

13 (B) EXPEDITED PROVISION.—The appro-
14 priate departments, agencies, and elements of
15 the executive branch of the Federal Government
16 shall cooperate to ensure that an application by
17 an individual who is a candidate for a position
18 with the Review Board, seeking security clear-
19 ances necessary to carry out the duties of the
20 position, is expeditiously reviewed and granted
21 or denied.

22 (c) COMPENSATION.—The Review Board shall fix the
23 compensation of the Executive Director and other employ-
24 ees of the Review Board without regard to chapter 51 and
25 subchapter III of chapter 53 of title 5, United States

1 Code, relating to classification of positions and General
2 Schedule pay rates, except that the rate of pay for the
3 Executive Director and other employees may not exceed
4 the rate payable for level V of the Executive Schedule
5 under section 5316 of title 5, United States Code.

6 (d) **ADVISORY COMMITTEES.**—

7 (1) **IN GENERAL.**—The Review Board may cre-
8 ate 1 or more advisory committees to assist in ful-
9 filling the responsibilities of the Review Board under
10 this Act.

11 (2) **APPLICABILITY OF FACCA.**—Any advisory
12 committee created by the Review Board shall be sub-
13 ject to the Federal Advisory Committee Act (5
14 U.S.C. App.).

15 **SEC. 9. REVIEW OF RECORDS BY THE MISSING ARMED**
16 **FORCES AND CIVILIAN PERSONNEL RECORDS**
17 **REVIEW BOARD.**

18 (a) **STARTUP REQUIREMENTS.**—The Review Board
19 shall—

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

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

5 (b) DETERMINATION OF THE REVIEW BOARD.—

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

14 (2) POSTPONEMENT.—In approving postpone-
15 ment of public disclosure of a missing Armed Forces
16 and civilian personnel record, or information within
17 a missing Armed Forces and civilian personnel
18 record, the Review Board shall seek to—

19 (A) provide for the disclosure of segregable
20 parts, substitutes, or summaries of the missing
21 Armed Forces and civilian personnel record;
22 and

23 (B) determine, in consultation with the
24 originating body and consistent with the stand-
25 ards for postponement under this Act, which of

1 the following alternative forms of disclosure
2 shall be made by the originating body:

3 (i) Any reasonably segregable par-
4 ticular information in a missing Armed
5 Forces and civilian personnel record.

6 (ii) A substitute record for that infor-
7 mation which is postponed.

8 (iii) A summary of a missing Armed
9 Forces and civilian personnel record.

10 (3) REPORTING.—With respect to a missing
11 Armed Forces and civilian personnel record, or in-
12 formation within a missing Armed Forces and civil-
13 ian personnel record, the public disclosure of which
14 is postponed under this Act, or for which only sub-
15 stitutions or summaries have been disclosed to the
16 public, the Review Board shall create and transmit
17 to the Archivist an unclassified and publicly releas-
18 able report containing—

19 (A) a description of actions by the Review
20 Board, the originating body, or any Government
21 office (including a justification of any such ac-
22 tion to postpone disclosure of any record or
23 part of any record) and of any official pro-
24 ceedings conducted by the Review Board; and

1 (B) a statement, based on a review of the
2 proceedings and in conformity with the deci-
3 sions reflected therein, designating a rec-
4 ommended specified time at which, or a speci-
5 fied occurrence following which, the material
6 may be appropriately disclosed to the public
7 under this Act, which the Review Board shall
8 disclose to the public with notice thereof, rea-
9 sonably calculated to make interested members
10 of the public aware of the existence of the state-
11 ment.

12 (4) ACTIONS AFTER DETERMINATION.—

13 (A) IN GENERAL.—Not later than 30 days
14 after the date of a determination by the Review
15 Board that a missing Armed Forces and civilian
16 personnel record shall be publicly disclosed in
17 the Collection or postponed for disclosure and
18 held in the protected Collection, the Review
19 Board shall notify the head of the originating
20 body of the determination and highlight and
21 make available the determination on a publicly
22 accessible website reasonably calculated to make
23 interested members of the public aware of the
24 existence of the determination.

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

17 (5) REFERRAL AFTER TERMINATION.—A miss-
18 ing Armed Forces and civilian personnel record that
19 is identified, located, or otherwise discovered after
20 the date on which the Review Board terminates shall
21 be transmitted to the Archivist for the Collection
22 and referred to the Committee on Armed Services of
23 the Senate and the Committee on Armed Services of
24 the House of Representatives for review, ongoing
25 oversight and, as warranted, referral for possible en-

1 enforcement action relating to a violation of this Act
2 and determination as to whether declassification of
3 the missing Armed Forces and civilian personnel is
4 warranted under this Act.

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

17 (d) REPORTS BY THE REVIEW BOARD.—

18 (1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this Act, and every year
20 thereafter until the Review Board terminates, the
21 Review Board shall submit a report regarding the
22 activities of the Review Board to—

23 (A) the Committee on Oversight and Re-
24 form of the House of Representatives;

1 ~~(B)~~ the Committee on Homeland Security
2 and Governmental Affairs of the Senate;

3 ~~(C)~~ the President;

4 ~~(D)~~ the Archivist; and

5 ~~(E)~~ the head of any Government office the
6 records of which have been the subject of Re-
7 view Board activity.

8 ~~(2)~~ CONTENTS.—Each report under paragraph
9 ~~(1)~~ shall include the following information:

10 ~~(A)~~ A financial report of the expenses for
11 all official activities and requirements of the
12 Review Board and its employees.

13 ~~(B)~~ The progress made on review, trans-
14 mission to the Archivist, and public disclosure
15 of missing Armed Forces and civilian personnel
16 records.

17 ~~(C)~~ The estimated time and volume of
18 missing Armed Forces and civilian personnel
19 records involved in the completion of the duties
20 of the Review Board under this Act.

21 ~~(D)~~ Any special problems, including re-
22 quests and the level of cooperation of Govern-
23 ment offices, with regard to the ability of the
24 Review Board to carry out its duties under this
25 Act.

1 (E) A record of review activities, including
2 a record of postponement decisions by the Re-
3 view Board or other related actions authorized
4 under this Act, and a record of the volume of
5 records reviewed and postponed.

6 (F) Suggestions and requests to Congress
7 for additional legislative authority needs.

8 (G) An appendix containing copies of re-
9 ports relating to postponed records submitted to
10 the Archivist under subsection (b)(3) since the
11 end of the period covered by the most recent re-
12 port under paragraph (1).

13 (3) TERMINATION NOTICE.—Not later than 90
14 days before the Review Board expects to complete
15 the work of the Review Board under this Act, the
16 Review Board shall provide written notice to Con-
17 gress of the intent of the Review Board to terminate
18 operations at a specified date.

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

21 (a) MATERIALS UNDER SEAL OF COURT.—

22 (1) IN GENERAL.—The Review Board may re-
23 quest the Attorney General to petition any court of
24 the United States or of a foreign country to release
25 any information relevant to the loss, fate, or status

1 of missing Armed Forces and civilian personnel that
2 is held under seal of the court.

3 ~~(2) GRAND JURY INFORMATION.—~~

4 ~~(A) IN GENERAL.—~~The Review Board may
5 request the Attorney General to petition any
6 court of the United States to release any infor-
7 mation relevant to loss, fate, or status of miss-
8 ing Armed Forces and civilian personnel that is
9 held under the injunction of secrecy of a grand
10 jury.

11 ~~(B) TREATMENT.—~~A request for disclo-
12 sure of missing Armed Forces and civilian per-
13 sonnel materials under this Act shall be deemed
14 to constitute a showing of particularized need
15 under rule 6 of the Federal Rules of Criminal
16 Procedure.

17 ~~(b) SENSE OF CONGRESS.—~~It is the sense of Con-
18 gress that—

19 ~~(1) the Attorney General should assist the Re-~~
20 ~~view Board in good faith to unseal any records that~~
21 ~~the Review Board determines to be relevant and held~~
22 ~~under seal by a court or under the injunction of se-~~
23 ~~crecy of a grand jury;~~

24 ~~(2) the Secretary of State should—~~

1 (A) contact the Governments of the Rus-
 2 sian Federation, the People's Republic of
 3 China, and the Democratic People's Republic of
 4 Korea to seek the disclosure of all records in
 5 their respective custody, possession, or control
 6 relevant to the loss, fate, or status of missing
 7 Armed Forces and civilian personnel; and

8 (B) contact any other foreign government
 9 that may hold information relevant to the loss,
 10 fate, or status of missing Armed Forces and ei-
 11 vilian personnel; and seek disclosure of such in-
 12 formation; and

13 (3) all agencies should cooperate in full with the
 14 Review Board to seek the disclosure of all informa-
 15 tion relevant to the loss, fate, or status of missing
 16 Armed Forces and civilian personnel consistent with
 17 the public interest.

18 **SEC. 11. RULES OF CONSTRUCTION.**

19 (a) PRECEDENCE OVER OTHER LAW.—When this
 20 Act requires transmission of a record to the Archivist or
 21 public disclosure, it shall take precedence over any other
 22 law (except section 6103 of the Internal Revenue Code of
 23 1986), judicial decision construing such law, or common
 24 law doctrine that would otherwise prohibit such trans-
 25 mission or disclosure, with the exception of deeds gov-

1 urning access to or transfer or release of gifts and dona-
2 tions of records to the United States Government.

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

8 (c) JUDICIAL REVIEW.—Nothing in this Act shall be
9 construed to preclude judicial review under chapter 7 of
10 title 5, United States Code, of final actions taken or re-
11 quired to be taken under this Act.

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

17 (e) RULES OF THE SENATE AND HOUSE OF REP-
18 RESENTATIVES.—To the extent that any provision of this
19 Act establishes a procedure to be followed in the Senate
20 or the House of Representatives, such provision is adopt-
21 ed—

22 (1) as an exercise of the rulemaking power of
23 the Senate and House of Representatives, respec-
24 tively, and is deemed to be part of the rules of each
25 House, respectively, but applicable only with respect

1 to the procedure to be followed in that House; and
2 it supersedes other rules only to the extent that it
3 is inconsistent with such rules; and

4 (2) with full recognition of the constitutional
5 right of either House to change the rules (so far as
6 they relate to the procedure of that House) at any
7 time; in the same manner; and to the same extent
8 as in the case of any other rule of that House.

9 **SEC. 12. REQUESTS FOR EXTENSIONS.**

10 The head of a Government office required to comply
11 with a deadline under this Act that is based off the con-
12 firmation date of the members of the Missing Armed
13 Forces and Civilian Personnel Records Review Board may
14 request an extension from the Board for good cause. If
15 the Board agrees to the request, the deadline applicable
16 to the Government office for the purpose of such require-
17 ment shall be such later date as the Board may determine
18 appropriate.

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

20 (a) PROVISIONS PERTAINING TO THE REVIEW
21 BOARD.—The provisions of this Act that pertain to the
22 appointment and operation of the Review Board shall
23 cease to be effective when the Review Board and the terms
24 of its members have terminated under section 7(o).

1 (b) OTHER PROVISIONS.—The remaining provisions
2 of this Act shall continue in effect until such time as the
3 Archivist certifies to the President and Congress that all
4 missing Armed Forces and civilian personnel records have
5 been made available to the public in accordance with this
6 Act.

7 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as are necessary to carry out this Act, to remain available
10 until expended.

11 **SEC. 15. SEVERABILITY.**

12 If any provision of this Act, or the application thereof
13 to any person or circumstance, is held invalid, the remain-
14 der of this Act and the application of that provision to
15 other persons not similarly situated or to other cir-
16 cumstances shall not be affected by the invalidation.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Bring Our Heroes Home*
19 *Act”.*

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

21 (a) *FINDINGS AND DECLARATIONS.*—Congress finds
22 and declares the following:

23 (1) *A vast number of records relating to missing*
24 *Armed Forces and civilian personnel have not been*
25 *identified, located, or transferred to the National Ar-*

1 *chives following review and declassification. Only in*
2 *the rarest cases is there any legitimate need for con-*
3 *tinued protection of records pertaining to missing*
4 *Armed Forces and civilian personnel who have been*
5 *missing for decades.*

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

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

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

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

24 (6) *All records of the Federal Government relat-*
25 *ing to missing Armed Forces and civilian personnel*

1 *should be preserved for historical and governmental*
2 *purposes and for public research.*

3 (7) *All records of the Federal Government relat-*
4 *ing to missing Armed Forces and civilian personnel*
5 *should carry a presumption of declassification, and*
6 *all such records should be disclosed under this Act to*
7 *enable the fullest possible accounting for missing*
8 *Armed Forces and civilian personnel.*

9 (8) *Legislation is necessary to create an enforce-*
10 *able, independent, and accountable process for the*
11 *public disclosure of records relating to missing Armed*
12 *Forces and civilian personnel.*

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

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

20 (1) *to provide for the creation of the Missing*
21 *Armed Forces and Civilian Personnel Records Collec-*
22 *tion at the National Archives; and*

23 (2) *to require the expeditious public trans-*
24 *mission to the Archivist and public disclosure of miss-*

1 *ing Armed Forces and civilian personnel records, sub-*
2 *ject to narrow exceptions, as set forth in this Act.*

3 **SEC. 3. DEFINITIONS.**

4 *In this Act:*

5 (1) *ARCHIVIST.*—*The term “Archivist” means*
6 *Archivist of the United States.*

7 (2) *COLLECTION.*—*The term “Collection” means*
8 *the Missing Armed Forces and Civilian Personnel*
9 *Records Collection established under section 4(a).*

10 (3) *DIRECTOR.*—*The term “Director” means the*
11 *Director of the Office of Government Ethics.*

12 (4) *EXECUTIVE AGENCY.*—*The term “Executive*
13 *agency”—*

14 (A) *means an agency, as defined in section*
15 *552(f) of title 5, United States Code;*

16 (B) *includes any Executive department,*
17 *military department, Government corporation,*
18 *Government controlled corporation, or other es-*
19 *tablishment in the executive branch of the Fed-*
20 *eral Government, including the Executive Office*
21 *of the President, any branch of the Armed*
22 *Forces, and any independent regulatory agency;*
23 *and*

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

4 (5) *EXECUTIVE BRANCH MISSING ARMED FORCES*
5 *AND CIVILIAN PERSONNEL RECORD.*—The term “exec-
6 utive branch missing Armed Forces and civilian per-
7 sonnel record” means a missing Armed Forces and ci-
8 vilian personnel record of an Executive agency, or in-
9 formation contained in such a missing Armed Forces
10 and civilian personnel record obtained by or devel-
11 oped within the executive branch of the Federal Gov-
12 ernment.

13 (6) *GOVERNMENT OFFICE.*—The term “Govern-
14 ment office” means an Executive agency, the Library
15 of Congress, or the National Archives.

16 (7) *MISSING ARMED FORCES AND CIVILIAN PER-*
17 *SONNEL.*—

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

21 (B) *INCLUSIONS.*—The term “missing
22 Armed Forces and civilian personnel” includes
23 an individual who was a missing person and
24 whose status was later changed to “missing and
25 presumed dead”.

1 (8) *MISSING ARMED FORCES AND CIVILIAN PER-*
2 *SONNEL RECORD.*—*The term “missing Armed Forces*
3 *and civilian personnel record” means a record that*
4 *relates, directly or indirectly, to the loss, fate, or sta-*
5 *tus of missing Armed Forces and civilian personnel*
6 *that—*

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

10 (i) *any Government office;*

11 (ii) *any Presidential library; or*

12 (iii) *any of the Armed Forces; and*

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

16 (i) *beginning on December 7, 1941;*

17 *and*

18 (ii) *ending on the date of enactment of*
19 *this Act.*

20 (9) *MISSING PERSON.*—*The term “missing per-*
21 *son” means—*

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

24 (B) *any other civilian employee of the Fed-*
25 *eral Government or an employee of a contractor*

1 *of the Federal Government who serves in direct*
2 *support of, or accompanies, the Armed Forces in*
3 *the field under orders and who is in a missing*
4 *status (as that term is defined in paragraph (2)*
5 *of such section 1513).*

6 (10) *NATIONAL ARCHIVES.*—*The term “National*
7 *Archives”*—

8 (A) *means the National Archives and*
9 *Records Administration; and*

10 (B) *includes any component of the National*
11 *Archives and Records Administration (including*
12 *Presidential archival depositories established*
13 *under section 2112 of title 44, United States*
14 *Code).*

15 (11) *OFFICIAL INVESTIGATION.*—*The term “offi-*
16 *cial investigation” means a review, briefing, inquiry,*
17 *or hearing relating to missing Armed Forces and ci-*
18 *vilian personnel conducted by a Presidential commis-*
19 *sion, committee of Congress, or agency, regardless of*
20 *whether it is conducted independently, at the request*
21 *of any Presidential commission or committee of Con-*
22 *gress, or at the request of any official of the Federal*
23 *Government.*

24 (12) *ORIGINATING BODY.*—*The term “originating*
25 *body” means the Government office or other initial*

1 source that created a record or particular information
2 within a record.

3 (13) *PUBLIC INTEREST.*—The term “public in-
4 terest” means the compelling interest in the prompt
5 public disclosure of missing Armed Forces and civil-
6 ian personnel records for historical and governmental
7 purposes, for public research, and for the purpose of
8 fully informing the people of the United States, most
9 importantly families of missing Armed Forces and ci-
10 vilian personnel, about the fate of the missing Armed
11 Forces and civilian personnel and the process by
12 which the Federal Government has sought to account
13 for them.

14 (14) *RECORD.*—The term “record” has the mean-
15 ing given the term “records” in section 3301 of title
16 44, United States Code.

17 (15) *REVIEW BOARD.*—The term “Review
18 Board” means the Missing Armed Forces and Civil-
19 ian Personnel Records Review Board established
20 under section 5.

21 **SEC. 4. MISSING ARMED FORCES AND CIVILIAN PERSONNEL**
22 **RECORDS COLLECTION AT THE NATIONAL AR-**
23 **CHIVES.**

24 (a) *ESTABLISHMENT OF COLLECTION.*—Not later than
25 90 days after a quorum of the Missing Armed Forces and

1 *Civilian Personnel Records Review Board has been estab-*
2 *lished under section 7, the Archivist shall—*

3 (1) *commence establishment of a collection of*
4 *records to be known as the “Missing Armed Forces*
5 *and Civilian Personnel Records Collection”;*

6 (2) *commence preparing the subject guidebook*
7 *and index to the Collection; and*

8 (3) *establish criteria and acceptable formats for*
9 *Executive agencies to follow when transmitting copies*
10 *of missing Armed Forces and civilian personnel*
11 *records to the Archivist, to include required metadata.*

12 (b) *REGULATIONS.—Not later than 90 days after the*
13 *date of the swearing in of the Board members, the Review*
14 *Board shall promulgate rules to establish guidelines and*
15 *processes for the disclosure of records contained in the Col-*
16 *lection.*

17 (c) *OVERSIGHT.—*

18 (1) *SENATE.—The Committee on Homeland Se-*
19 *curity and Governmental Affairs of the Senate shall*
20 *have continuing jurisdiction, including legislative*
21 *oversight jurisdiction, in the Senate with respect to*
22 *the Collection.*

23 (2) *HOUSE OF REPRESENTATIVES.—The Com-*
24 *mittee on Oversight and Accountability of the House*
25 *of Representatives shall have continuing jurisdiction,*

1 *including legislative oversight jurisdiction, in the*
2 *House of Representatives with respect to the Collec-*
3 *tion.*

4 **SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE**
5 **NATIONAL ARCHIVES, AND PUBLIC DISCLO-**
6 **SURE OF MISSING ARMED FORCES AND CIVIL-**
7 **IAN PERSONNEL RECORDS BY GOVERNMENT**
8 **OFFICES.**

9 *(a) IN GENERAL.—*

10 *(1) PREPARATION.—As soon as practicable after*
11 *the date of enactment of this Act, and sufficiently in*
12 *advance of the deadlines established under this Act,*
13 *each Government office shall—*

14 *(A) identify and locate any missing Armed*
15 *Forces and civilian personnel records in the cus-*
16 *tody, possession, or control of the Government of-*
17 *fice, including intelligence reports, congressional*
18 *inquiries, memoranda to or from the White*
19 *House and other Federal departments and agen-*
20 *cies, Prisoner of War (POW) debriefings, live*
21 *sighting reports, documents relating to POW*
22 *camps, movement of POWs, exploitation of*
23 *POWs, experimentation on POWs, or status*
24 *changes from Missing in Action (MIA) to Killed*
25 *in Action (KIA); and*

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

8 (2) *CERTIFICATION.*—Each Government office
9 shall submit to the Archivist, under penalty of per-
10 jury, a certification indicating—

11 (A) whether the Government office has con-
12 ducted a thorough search for all missing Armed
13 Forces and civilian personnel records in the cus-
14 tody, possession, or control of the Government of-
15 fice; and

16 (B) whether a copy of any missing Armed
17 Forces and civilian personnel record has not
18 been transmitted to the Archivist.

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

22 (4) *EFFECT OF PREVIOUS DISCLOSURE.*—Infor-
23 mation that was made available or disclosed to the
24 public before the date of enactment of this Act in a
25 missing Armed Forces and civilian personnel record

1 *may not be withheld, redacted, postponed for public*
2 *disclosure, or reclassified.*

3 (5) *WITHHELD AND SUBSTANTIALLY REDACTED*
4 *RECORDS.—For any missing Armed Forces and civil-*
5 *ian personnel record that is transmitted to the Archi-*
6 *ivist which a Government office proposes to substan-*
7 *tially redact or withhold in full from public access,*
8 *the head of the Government office shall submit an un-*
9 *classified and publicly releasable report to the Archi-*
10 *ivist, the Review Board, and each appropriate com-*
11 *mittee of the Senate and the House of Representatives*
12 *justifying the decision of the Government office to sub-*
13 *stantially redact or withhold the record by dem-*
14 *onstrating that the release of information would clear-*
15 *ly and demonstrably be expected to cause an articu-*
16 *lated harm, and that the harm would be of such grav-*
17 *ity as to outweigh the public interest in access to the*
18 *information.*

19 (b) *REVIEW.—*

20 (1) *IN GENERAL.—Except as provided under*
21 *paragraph (5), not later than 180 days after a*
22 *quorum of the Missing Armed Forces and Civilian*
23 *Personnel Records Review Board has been established*
24 *under section 7, each Government office shall, in ac-*

1 *cordance with the criteria and acceptable formats es-*
2 *tablished by the Archivist—*

3 *(A) identify, locate, copy, and review each*
4 *missing Armed Forces and civilian personnel*
5 *record in the custody, possession, or control of*
6 *the Government office for transmission to the Ar-*
7 *chivist and disclosure to the public or, if needed,*
8 *review by the Review Board; and*

9 *(B) cooperate fully, in consultation with the*
10 *Archivist, in carrying out paragraph (3).*

11 *(2) REQUIREMENT.—The Review Board shall*
12 *promulgate rules for the disclosure of relevant records*
13 *by Government offices under paragraph (1).*

14 *(3) NATIONAL ARCHIVES RECORDS.—Not later*
15 *than 180 days after a quorum of the Missing Armed*
16 *Forces and Civilian Personnel Records Review Board*
17 *has been established under section 7, the Archivist*
18 *shall—*

19 *(A) locate and identify all missing Armed*
20 *Forces and civilian personnel records in the cus-*
21 *tody of the National Archives as of the date of*
22 *enactment of this Act that remain classified, in*
23 *whole or in part;*

1 (B) notify a Government office if the Archi-
2 vist locates and identifies a record of the Govern-
3 ment office under subparagraph (A); and

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

10 (4) *RECORDS ALREADY PUBLIC.*—A missing
11 Armed Forces and civilian personnel record that is in
12 the custody of the National Archives on the date of en-
13 actment of this Act and that has been publicly avail-
14 able in its entirety without redaction shall be made
15 available in the Collection without any additional re-
16 view by the Archivist, the Review Board, or any other
17 Government office under this Act.

18 (5) *EXEMPTIONS.*—

19 (A) *DEPARTMENT OF DEFENSE POW/MIA AC-*
20 *COUNTING AGENCY.*—The Defense POW/MIA Ac-
21 counting Agency (DPAA) is exempt from the re-
22 quirement under this subsection to declassify and
23 transmit to the Archivist documents in its cus-
24 tody or control that pertain to a specific case or
25 cases that DPAA is actively investigating or de-

1 *veloping for the purpose of locating, disinterring,*
2 *or identifying a missing member of the Armed*
3 *Forces*

4 (B) *DEPARTMENT OF DEFENSE MILITARY*
5 *SERVICE CASUALTY OFFICES AND DEPARTMENT*
6 *OF STATE SERVICE CASUALTY OFFICES.—The*
7 *Department of Defense Military Service Casualty*
8 *Offices and the Department of State Service Cas-*
9 *ualty Offices are exempt from the requirement to*
10 *declassify and transmit to the Archivist docu-*
11 *ments in their custody or control that pertain to*
12 *individual cases with respect to which the office*
13 *is lending support and assistance to the families*
14 *of missing individuals.*

15 (c) *TRANSMISSION TO THE NATIONAL ARCHIVES.—*

16 *Each Government office shall—*

17 (1) *not later than 180 days after a quorum of*
18 *the Missing Armed Forces and Civilian Personnel*
19 *Records Review Board has been established under sec-*
20 *tion 7, commence transmission to the Archivist of*
21 *copies of the missing Armed Forces and civilian per-*
22 *sonnel records in the custody, possession, or control of*
23 *the Government office; and*

24 (2) *not later than 1 year after a quorum of the*
25 *Missing Armed Forces and Civilian Personnel*

1 *Records Review Board has been established under sec-*
 2 *tion 7, complete transmission to the Archivist of cop-*
 3 *ies of all missing Armed Forces and civilian per-*
 4 *sonnel records in the possession or control of the Gov-*
 5 *ernment office.*

6 *(d) PERIODIC REVIEW OF POSTPONED MISSING*
 7 *ARMED FORCES AND CIVILIAN PERSONNEL RECORDS.—*

8 *(1) IN GENERAL.—All missing Armed Forces*
 9 *and civilian personnel records, or information within*
 10 *a missing Armed Forces and civilian personnel*
 11 *record, the public disclosure of which has been post-*
 12 *poned under the standards under this Act shall be re-*
 13 *viewed by the originating body—*

14 *(A)(i) periodically, but not less than every*
 15 *5 years, after the date on which the Review*
 16 *Board terminates under section 7(o); and*

17 *(ii) at the direction of the Archivist; and*

18 *(B) consistent with the recommendations of*
 19 *the Review Board under section 9(b)(3)(B).*

20 *(2) CONTENTS.—*

21 *(A) IN GENERAL.—A periodic review of a*
 22 *missing Armed Forces and civilian personnel*
 23 *record, or information within a missing Armed*
 24 *Forces and civilian personnel record, by the orig-*
 25 *inating body shall address the public disclosure*

1 *of the missing Armed Forces and civilian per-*
2 *sonnel record under the standards under this*
3 *Act.*

4 (B) *CONTINUED POSTPONEMENT.*—*If an*
5 *originating body conducting a periodic review of*
6 *a missing Armed Forces and civilian personnel*
7 *record, or information within a missing Armed*
8 *Forces and civilian personnel record, the public*
9 *disclosure of which has been postponed under the*
10 *standards under this Act, determines that con-*
11 *tinued postponement is required, the originating*
12 *body shall provide to the Archivist an unclassi-*
13 *fied written description of the reason for the con-*
14 *tinued postponement that the Archivist shall*
15 *highlight and make accessible on a publicly ac-*
16 *cessible website administered by the National Ar-*
17 *chives.*

18 (C) *SCOPE.*—*The periodic review of post-*
19 *poned missing Armed Forces and civilian per-*
20 *sonnel records, or information within a missing*
21 *Armed Forces and civilian personnel record,*
22 *shall serve the purpose stated in section 2(b)(2),*
23 *to provide expeditious public disclosure of miss-*
24 *ing Armed Forces and civilian personnel records,*
25 *to the fullest extent possible, subject only to the*

1 grounds for postponement of disclosure under
2 section 6.

3 (D) *DISCLOSURE ABSENT CERTIFICATION*
4 *BY PRESIDENT.*—Not later than 10 years after a
5 quorum of the Missing Armed Forces and Civil-
6 ian Personnel Records Review Board has been
7 established under section 7, all missing Armed
8 Forces and civilian personnel records, and infor-
9 mation within a missing Armed Forces and ci-
10 vilian personnel record, shall be publicly dis-
11 closed in full, and available in the Collection,
12 unless—

13 (i) the head of the originating body,
14 Executive agency, or other Government of-
15 fice recommends in writing that continued
16 postponement is necessary;

17 (ii) the written recommendation de-
18 scribed in clause (i)—

19 (I) is provided to the Archivist in
20 unclassified and publicly releasable
21 form not later than 180 days before the
22 date that is 10 years after a quorum of
23 the Missing Armed Forces and Civilian
24 Personnel Records Review Board has
25 been established under section 7; and

1 (II) includes—

2 (aa) a justification of the
3 recommendation to postpone dis-
4 closure with clear and convincing
5 evidence that the identifiable
6 harm is of such gravity that it
7 outweighs the public interest in
8 disclosure; and

9 (bb) a recommended specified
10 time at which or a specified oc-
11 currence following which the ma-
12 terial may be appropriately dis-
13 closed to the public under this
14 Act;

15 (iii) the Archivist transmits all rec-
16 ommended postponements and the rec-
17 ommendation of the Archivist to the Presi-
18 dent not later than 90 days before the date
19 that is 10 years after the date a quorum of
20 the Missing Armed Forces and Civilian
21 Personnel Records Review Board has been
22 established under section 7; and

23 (iv) the President transmits to the Ar-
24 chivist a certification indicating that con-
25 tinued postponement is necessary and the

1 *identifiable harm, as demonstrated by clear*
2 *and convincing evidence, is of such gravity*
3 *that it outweighs the public interest in dis-*
4 *closure not later than the date that is 10*
5 *years after a quorum of the Missing Armed*
6 *Forces and Civilian Personnel Records Re-*
7 *view Board has been established under sec-*
8 *tion 7.*

9 **SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
10 **SURE OF RECORDS.**

11 *(a) IN GENERAL.—Disclosure to the public of a miss-*
12 *ing Armed Forces and civilian personnel record or par-*
13 *ticular information in a missing Armed Forces and civil-*
14 *ian personnel record created after the date that is 25 years*
15 *before the date of the review of the missing Armed Forces*
16 *and civilian personnel record by the Archivist may be post-*
17 *poned subject to the limitations under this Act only—*

18 *(1) if it pertains to—*

19 *(A) military plans, weapons systems, or op-*
20 *erations;*

21 *(B) foreign government information;*

22 *(C) intelligence activities (including covert*
23 *action), intelligence sources or methods, or*
24 *cryptology;*

1 (D) *foreign relations or foreign activities of*
2 *the United States, including confidential sources;*

3 (E) *scientific, technological, or economic*
4 *matters relating to the national security;*

5 (F) *United States Government programs for*
6 *safeguarding nuclear materials or facilities;*

7 (G) *vulnerabilities or capabilities of sys-*
8 *tems, installations, infrastructures, projects,*
9 *plans, or protection services relating to the na-*
10 *tional security; or*

11 (H) *the development, production, or use of*
12 *weapons of mass destruction; and*

13 (2) *the threat posed by the public disclosure of*
14 *the missing Armed Forces and civilian personnel*
15 *record or information is of such gravity that it out-*
16 *weighs the public interest in disclosure.*

17 (b) *OLDER RECORDS.—Disclosure to the public of a*
18 *missing Armed Forces and civilian personnel record or par-*
19 *ticular information in a missing Armed Forces and civil-*
20 *ian personnel record created on or before the date that is*
21 *25 years before the date of the review of the missing Armed*
22 *Forces and civilian personnel record by the Archivist may*
23 *be postponed subject to the limitations under this Act only*
24 *if, as demonstrated by clear and convincing evidence—*

1 (1) *the release of the information would be ex-*
2 *pected to—*

3 (A) *reveal the identity of a confidential*
4 *human source, a human intelligence source, a re-*
5 *lationship with an intelligence or security service*
6 *of a foreign government or international organi-*
7 *zation, or a nonhuman intelligence source, or*
8 *impair the effectiveness of an intelligence method*
9 *currently in use, available for use, or under de-*
10 *velopment;*

11 (B) *reveal information that would impair*
12 *United States cryptologic systems or activities;*

13 (C) *reveal formally named or numbered*
14 *United States military war plans that remain*
15 *in effect, or reveal operational or tactical ele-*
16 *ments of prior plans that are contained in such*
17 *active plans; or*

18 (D) *reveal information, including foreign*
19 *government information, that would cause seri-*
20 *ous harm to relations between the United States*
21 *and a foreign government, or to ongoing diplo-*
22 *matic activities of the United States; and*

23 (2) *the threat posed by the public disclosure of*
24 *the missing Armed Forces and civilian personnel*

1 *record or information is of such gravity that it out-*
2 *weighs the public interest in disclosure.*

3 (c) *EXCEPTION.—Regardless of the date on which a*
4 *missing Armed Forces and civilian personnel record was*
5 *created, disclosure to the public of information in the miss-*
6 *ing Armed Forces and civilian personnel record may be*
7 *postponed if—*

8 (1) *the public disclosure of the information*
9 *would reveal the name or identity of a living person*
10 *who provided confidential information to the United*
11 *States and would pose a substantial risk of harm to*
12 *that person;*

13 (2) *the public disclosure of the information could*
14 *reasonably be expected to constitute an unwarranted*
15 *invasion of personal privacy, and that invasion of*
16 *privacy is so substantial that it outweighs the public*
17 *interest;*

18 (3) *the public disclosure of the information could*
19 *reasonably be expected to cause harm to the methods*
20 *currently in use or available for use by members of*
21 *the Armed Forces to survive, evade, resist, or escape;*
22 *or*

23 (4) *the public disclosure of such information*
24 *would conflict with United States law or regulations.*

1 **SEC. 7. ESTABLISHMENT AND POWERS OF THE MISSING**
2 **ARMED FORCES AND CIVILIAN PERSONNEL**
3 **RECORDS REVIEW BOARD.**

4 (a) *ESTABLISHMENT.*—*There is established as an inde-*
5 *pendent establishment in the executive branch a board to*
6 *be known as the “Missing Armed Forces and Civilian Per-*
7 *sonnel Records Review Board” to ensure and facilitate the*
8 *review, transmission to the Archivist, and public disclosure*
9 *of missing Armed Forces and civilian personnel records.*

10 (b) *MEMBERSHIP.*—

11 (1) *APPOINTMENTS.*—*The Review Board shall be*
12 *composed of 5 members appointed by the President, of*
13 *whom—*

14 (A) *1 shall be appointed by the President,*
15 *in consultation with the Archivist of the United*
16 *States and by and with the advice and consent*
17 *of the Senate, and shall serve as the Chairperson*
18 *of the Review Board;*

19 (B) *1 shall be recommended by the majority*
20 *leader of the Senate;*

21 (C) *1 shall be recommended by the minority*
22 *leader of the Senate;*

23 (D) *1 shall be recommended by the Speaker*
24 *of the House of Representatives; and*

25 (E) *1 shall be recommended by the minority*
26 *leader of the House of Representatives.*

1 (2) *QUALIFICATIONS.*—*The members of the Re-*
2 *view Board shall—*

3 (A) *be appointed without regard to political*
4 *affiliation;*

5 (B) *be citizens of the United States of integ-*
6 *rity and impartiality;*

7 (C) *not be employees of an Executive agency*
8 *on the date of the appointment;*

9 (D) *have high national professional reputa-*
10 *tion in their fields and be capable of exercising*
11 *the independent and objective judgment nec-*
12 *essary to the fulfillment of their role in ensuring*
13 *and facilitating the identification, location, re-*
14 *view, transmission to the Archivist, and public*
15 *disclosure of missing Armed Forces and civilian*
16 *personnel records;*

17 (E) *possess an appreciation of the value of*
18 *missing Armed Forces and civilian personnel*
19 *records to scholars, the Federal Government, and*
20 *the public, particularly families of missing*
21 *Armed Forces and civilian personnel;*

22 (F) *include at least 1 professional historian;*
23 *and*

24 (G) *include at least 1 attorney.*

1 (3) *CONSULTATION WITH THE OFFICE OF GOV-*
2 *ERNMENT ETHICS.*—*In considering persons to be ap-*
3 *pointed to the Review Board, the President shall con-*
4 *sult with the Director of the Office of Government*
5 *Ethics to—*

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

10 (B) *ensure that no individual selected for*
11 *such position of member of the Review Board*
12 *possesses a conflict of interest as so determined.*

13 (4) *CONSULTATION.*—*Appointments to the Re-*
14 *view Board shall be made after considering individ-*
15 *uals recommended by the American Historical Asso-*
16 *ciation, the Organization of American Historians, the*
17 *Society of American Archivists, the American Bar As-*
18 *sociation, veterans' organizations, and organizations*
19 *representing families of missing Armed Forces and ci-*
20 *vilian personnel.*

21 (c) *SECURITY CLEARANCES.*—*The appropriate depart-*
22 *ments, agencies, and elements of the executive branch of the*
23 *Federal Government shall cooperate to ensure that an appli-*
24 *cation by an individual nominated to be a member of the*
25 *Review Board, seeking security clearances necessary to*

1 *carry out the duties of the Review Board, is expeditiously*
2 *reviewed and granted or denied.*

3 (d) *CONSIDERATION BY THE SENATE.—Nominations*
4 *for appointment under subsection (b)(1)(A) shall be referred*
5 *to the Committee on Homeland Security and Governmental*
6 *Affairs of the Senate for consideration.*

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

11 (f) *CHAIRPERSON NEEDED FOR QUORUM.—A major-*
12 *ity of the members of the Review Board, including the*
13 *Chairperson appointed and confirmed pursuant to sub-*
14 *section (b)(1)(A), shall constitute a quorum.*

15 (g) *REMOVAL OF REVIEW BOARD MEMBER.—*

16 (1) *IN GENERAL.—A member of the Review*
17 *Board shall not be removed from office, other than—*

18 (A) *by impeachment by Congress; or*

19 (B) *by the action of the President for ineffi-*
20 *ciency, neglect of duty, malfeasance in office,*
21 *physical disability, mental incapacity, or any*
22 *other condition that substantially impairs the*
23 *performance of the member's duties.*

24 (2) *JUDICIAL REVIEW.—*

1 (A) *IN GENERAL.*—A member of the Review
2 Board removed from office may obtain judicial
3 review of the removal in a civil action com-
4 menced in the United States District Court for
5 the District of Columbia.

6 (B) *RELIEF.*—The member may be rein-
7 stated or granted other appropriate relief by
8 order of the court.

9 (3) *NOTICE OF REMOVAL.*—If a member of the
10 Review Board is removed from office, and that re-
11 moval is by the President, not later than 10 days
12 after the removal, the President shall submit to the
13 leadership of Congress, the Committee on Homeland
14 Security and Governmental Affairs of the Senate and
15 the Committee on Oversight and Reform of the House
16 of Representatives a report specifying the facts found
17 and the grounds for the removal.

18 (h) *COMPENSATION OF MEMBERS.*—

19 (1) *BASIC PAY.*—A member of the Review Board
20 shall be treated as an employee of the executive
21 branch and compensated at a rate equal to the daily
22 equivalent of the annual rate of basic pay prescribed
23 for level IV of the Executive Schedule under section
24 5315 of title 5, United States Code, for each day (in-
25 cluding travel time) during which the member is en-

1 gaged in the performance of the duties of the Review
2 Board.

3 (2) *TRAVEL EXPENSES.*—A member of the Re-
4 view Board shall be allowed reasonable travel ex-
5 penses, including per diem in lieu of subsistence, at
6 rates for employees of agencies under subchapter I of
7 chapter 57 of title 5, United States Code, while away
8 from the member's home or regular place of business
9 in the performance of services for the Review Board.

10 (i) *DUTIES OF THE REVIEW BOARD.*—

11 (1) *IN GENERAL.*—The Review Board shall con-
12 sider and render a decision on a determination by a
13 Government office to seek to postpone the disclosure of
14 a missing Armed Forces and civilian personnel
15 record, in whole or in part.

16 (2) *RECORDS.*—In carrying out paragraph (1),
17 the Review Board shall consider and render a deci-
18 sion regarding—

19 (A) whether a record constitutes a missing
20 Armed Forces and civilian personnel record; and

21 (B) whether a missing Armed Forces and
22 civilian personnel record, or particular informa-
23 tion in a missing Armed Forces and civilian
24 personnel record, qualifies for postponement of
25 disclosure under this Act.

1 (j) *POWERS.*—*The Review Board shall have the au-*
2 *thority to act in a manner prescribed under this Act, in-*
3 *cluding authority to—*

4 (1) *direct Government offices to transmit to the*
5 *Archivist missing Armed Forces and civilian per-*
6 *sonnel records as required under this Act;*

7 (2) *direct Government offices to transmit to the*
8 *Archivist substitutes and summaries of missing*
9 *Armed Forces and civilian personnel records that can*
10 *be publicly disclosed to the fullest extent for any miss-*
11 *ing Armed Forces and civilian personnel record that*
12 *is proposed for postponement in full or that is sub-*
13 *stantially redacted;*

14 (3) *obtain access to missing Armed Forces and*
15 *civilian personnel records that have been identified by*
16 *a Government office;*

17 (4) *direct a Government office to make available*
18 *to the Review Board, and if necessary investigate the*
19 *facts surrounding, additional information, records, or*
20 *testimony from individuals, which the Review Board*
21 *has reason to believe is required to fulfill its functions*
22 *and responsibilities under this Act;*

23 (5) *hold such hearings, sit and act at such times*
24 *and places, take such testimony, receive such evidence,*
25 *and administer such oaths as the Review Board con-*

1 *siders advisable to carry out its responsibilities under*
2 *this Act;*

3 (6) *hold individuals in contempt for failure to*
4 *comply with directives and mandates issued by the*
5 *Review Board under this Act, which shall not include*
6 *the authority to imprison or fine any individual;*

7 (7) *require any Government office to account in*
8 *writing for the destruction of any records relating to*
9 *the loss, fate, or status of missing Armed Forces and*
10 *civilian personnel;*

11 (8) *receive information from the public regard-*
12 *ing the identification and public disclosure of missing*
13 *Armed Forces and civilian personnel records; and*

14 (9) *make a final determination regarding wheth-*
15 *er a missing Armed Forces and civilian personnel*
16 *record will be disclosed to the public or disclosure of*
17 *the missing Armed Forces and civilian personnel*
18 *record to the public will be postponed, notwith-*
19 *standing the determination of an Executive agency.*

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

23 (l) *OVERSIGHT.—*

24 (1) *IN GENERAL.—The Committee on Homeland*
25 *Security and Governmental Affairs of the Senate and*

1 *the Committee on Oversight and Reform of the House*
2 *of Representatives shall—*

3 *(A) have continuing legislative oversight ju-*
4 *risdiction with respect to the official conduct of*
5 *the Review Board and the disposition of post-*
6 *poned records after termination of the Review*
7 *Board; and*

8 *(B) not later than 10 days after submitting*
9 *a request, be provided access to any records held*
10 *or created by the Review Board.*

11 *(2) DUTY OF REVIEW BOARD.—The Review*
12 *Board shall have the duty to cooperate with the exer-*
13 *cise of oversight jurisdiction under paragraph (1).*

14 *(3) SECURITY CLEARANCES.—The Chairman and*
15 *Ranking Members of the Committee on Homeland Se-*
16 *curity and Governmental Affairs of the Senate and*
17 *the Committee on Oversight and Accountability of the*
18 *House of Representatives, and designated Committee*
19 *staff, shall be granted all security clearances and ac-*
20 *cesses held by the Review Board, including to relevant*
21 *Presidential and department or agency special access*
22 *and compartmented access programs.*

23 *(m) SUPPORT SERVICES.—The Administrator of the*
24 *General Services Administration shall provide administra-*
25 *tive services for the Review Board on a reimbursable basis.*

1 (n) *INTERPRETIVE REGULATIONS.*—*The Review Board*
2 *may issue interpretive regulations.*

3 (o) *TERMINATION AND WINDING UP.*—

4 (1) *IN GENERAL.*—*Two years after the date of*
5 *enactment of this Act, the Review Board shall, by ma-*
6 *jority vote, determine whether all Government offices*
7 *have complied with the obligations, mandates, and di-*
8 *rectives under this Act.*

9 (2) *TERMINATION DATE.*—*The Review Board*
10 *shall terminate on the date that is 4 years after the*
11 *date of swearing in of the Board members.*

12 (3) *REPORT.*—*Before the termination of the Re-*
13 *view Board under paragraph (2), the Review Board*
14 *shall submit to Congress reports, including a complete*
15 *and accurate accounting of expenditures during its*
16 *existence, and shall complete all other reporting re-*
17 *quirements under this Act.*

18 (4) *RECORDS.*—*Upon termination of the Review*
19 *Board, the Review Board shall transfer all records of*
20 *the Review Board to the Archivist for inclusion in the*
21 *Collection, and no record of the Review Board shall*
22 *be destroyed.*

23 **SEC. 8. MISSING ARMED FORCES AND CIVILIAN PERSONNEL**

24 **RECORDS REVIEW BOARD PERSONNEL.**

25 (a) *EXECUTIVE DIRECTOR.*—

1 (1) *IN GENERAL.*—Not later than 45 days after
2 the initial meeting of the Review Board, the Review
3 Board shall appoint an individual to the position of
4 Executive Director.

5 (2) *QUALIFICATIONS.*—The individual appointed
6 as Executive Director of the Review Board—

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

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

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

13 (3) *CONSULTATION WITH THE OFFICE OF GOV-*
14 *ERNMENT ETHICS.*—In their consideration of the per-
15 son to be appointed to the position of Executive Di-
16 rector of the Review Board, the Review Board shall
17 consult with the Director of the Office of Government
18 Ethics to—

19 (A) determine criteria for possible conflicts
20 of interest of the Executive Director of the Re-
21 view Board, consistent with ethics laws, statutes,
22 and regulations for executive branch employees;
23 and

24 (B) ensure that no individual selected for
25 such position of Executive Director of the Review

1 *Board possesses a conflict of interest as so deter-*
2 *mined.*

3 (4) *SECURITY CLEARANCE.*—

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

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

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

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

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

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

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

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

6 (b) STAFF.—

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

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

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

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

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

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

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

13 (4) *SECURITY CLEARANCE.*—

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

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

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

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

11 **(b) DETERMINATION OF THE REVIEW BOARD.—**

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

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

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

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

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

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

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

16 (3) *REPORTING.*—With respect to a missing
17 Armed Forces and civilian personnel record, or infor-
18 mation within a missing Armed Forces and civilian
19 personnel record, the public disclosure of which is
20 postponed under this Act, or for which only substi-
21 tutions or summaries have been disclosed to the pub-
22 lic, the Review Board shall create and transmit to the
23 Archivist, the Committee on Homeland Security and
24 Governmental Affairs of the Senate, and the Com-
25 mittee on Oversight and Accountability of the House

1 *of Representatives an unclassified and publicly releas-*
2 *able report containing—*

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

9 *(B) a statement, based on a review of the*
10 *proceedings and in conformity with the decisions*
11 *reflected therein, designating a recommended*
12 *specified time at which, or a specified occurrence*
13 *following which, the material may be appro-*
14 *priately disclosed to the public under this Act,*
15 *which the Review Board shall disclose to the*
16 *public with notice thereof, reasonably calculated*
17 *to make interested members of the public aware*
18 *of the existence of the statement.*

19 *(4) ACTIONS AFTER DETERMINATION.—*

20 *(A) IN GENERAL.—Not later than 30 days*
21 *after the date of a determination by the Review*
22 *Board that a missing Armed Forces and civilian*
23 *personnel record shall be publicly disclosed in the*
24 *Collection or postponed for disclosure and held*
25 *in the protected Collection, the Review Board*

1 shall notify the head of the originating body of
2 the determination and highlight and make avail-
3 able the determination on a publicly accessible
4 website reasonably calculated to make interested
5 members of the public aware of the existence of
6 the determination.

7 (B) *OVERSIGHT NOTICE.*—Simultaneous
8 with notice under subparagraph (A), the Review
9 Board shall provide notice of a determination
10 concerning the public disclosure or postponement
11 of disclosure of a missing Armed Forces and ci-
12 vilian personnel record, or information con-
13 tained within a missing Armed Forces and civil-
14 ian personnel record, which shall include a writ-
15 ten unclassified justification for public disclosure
16 or postponement of disclosure, including an ex-
17 planation of the application of any standards in
18 section 6 to the President, to the Committee on
19 Homeland Security and Governmental Affairs of
20 the Senate, and the Committee on Oversight and
21 Reform of the House of Representatives.

22 (5) *REFERRAL AFTER TERMINATION.*—A missing
23 Armed Forces and civilian personnel record that is
24 identified, located, or otherwise discovered after the
25 date on which the Review Board terminates shall be

1 *transmitted to the Archivist for the Collection and re-*
2 *ferred to the Committee on Armed Services of the Sen-*
3 *ate and the Committee on Armed Services of the*
4 *House of Representatives for review, ongoing oversight*
5 *and, as warranted, referral for possible enforcement*
6 *action relating to a violation of this Act and deter-*
7 *mination as to whether declassification of the missing*
8 *Armed Forces and civilian personnel is warranted*
9 *under this Act.*

10 *(c) NOTICE TO PUBLIC.—Every 30 days, beginning on*
11 *the date that is 60 days after the date on which the Review*
12 *Board first approves the postponement of disclosure of a*
13 *missing Armed Forces and civilian personnel record, the*
14 *Review Board shall highlight and make accessible on a pub-*
15 *licly available website reasonably calculated to make inter-*
16 *ested members of the public aware of the existence of the*
17 *postponement a notice that summarizes the postponements*
18 *approved by the Review Board, including a description of*
19 *the subject, originating body, length or other physical de-*
20 *scription, and each ground for postponement that is relied*
21 *upon.*

22 *(d) REPORTS BY THE REVIEW BOARD.—*

23 *(1) IN GENERAL.—Not later than 1 year after*
24 *the date of enactment of this Act, and every year*
25 *thereafter until the Review Board terminates, the Re-*

1 *view Board shall submit a report regarding the ac-*
2 *tivities of the Review Board to—*

3 *(A) the Committee on Oversight and Reform*
4 *of the House of Representatives;*

5 *(B) the Committee on Homeland Security*
6 *and Governmental Affairs of the Senate;*

7 *(C) the President;*

8 *(D) the Archivist; and*

9 *(E) the head of any Government office the*
10 *records of which have been the subject of Review*
11 *Board activity.*

12 *(2) CONTENTS.—Each report under paragraph*
13 *(1) shall include the following information:*

14 *(A) A financial report of the expenses for all*
15 *official activities and requirements of the Review*
16 *Board and its employees.*

17 *(B) The progress made on review, trans-*
18 *mission to the Archivist, and public disclosure of*
19 *missing Armed Forces and civilian personnel*
20 *records.*

21 *(C) The estimated time and volume of miss-*
22 *ing Armed Forces and civilian personnel records*
23 *involved in the completion of the duties of the*
24 *Review Board under this Act.*

1 (D) Any special problems, including re-
2 quests and the level of cooperation of Government
3 offices, with regard to the ability of the Review
4 Board to carry out its duties under this Act.

5 (E) A record of review activities, including
6 a record of postponement decisions by the Review
7 Board or other related actions authorized under
8 this Act, and a record of the volume of records
9 reviewed and postponed.

10 (F) Suggestions and requests to Congress for
11 additional legislative authority needs.

12 (G) An appendix containing copies of re-
13 ports relating to postponed records submitted to
14 the Archivist under subsection (b)(3) since the
15 end of the period covered by the most recent re-
16 port under paragraph (1).

17 (3) COPIES AND BRIEFS.—Coincident with the
18 reporting requirements in paragraph (2), or more fre-
19 quently as warranted by new information, the Review
20 Board shall provide copies to, and fully brief, at a
21 minimum, the President, the Archivist, leadership of
22 Congress, the Chairman and Ranking Members of the
23 Committee on Homeland Security and Governmental
24 Affairs of the Senate and the Committee on Oversight
25 and Accountability of the House of Representatives,

1 *and the Chairs and Chairmen, as the case may be,*
2 *and Ranking Members and Vice Chairmen, as the*
3 *case may be, of such other committees as leadership*
4 *of Congress determines appropriate on the Controlled*
5 *Disclosure Campaign Plan, classified appendix, and*
6 *postponed disclosures, specifically addressing—*

7 *(A) recommendations for periodic review,*
8 *downgrading, and declassification, as well as the*
9 *exact time or specified occurrence following*
10 *which specific missing Armed Forces and civil-*
11 *ian material may be appropriately disclosed;*

12 *(B) the rationale behind each postponement*
13 *determination and the recommended means to*
14 *achieve disclosure of each postponed item;*

15 *(C) any other findings that the Review*
16 *Board chooses to offer; and*

17 *(D) an addendum containing copies of re-*
18 *ports of postponed records to the Archivist re-*
19 *quired under subsection (b)(3) made since the*
20 *date of the preceding report under this sub-*
21 *section.*

22 *(4) TERMINATION NOTICE.—Not later than 90*
23 *days before the Review Board expects to complete the*
24 *work of the Review Board under this Act, the Review*
25 *Board shall provide written notice to Congress of the*

1 *intent of the Review Board to terminate operations at*
2 *a specified date.*

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

5 *(a) MATERIALS UNDER SEAL OF COURT.—*

6 *(1) IN GENERAL.—The Review Board may re-*
7 *quest the Attorney General to petition any court of*
8 *the United States or of a foreign country to release*
9 *any information relevant to the loss, fate, or status of*
10 *missing Armed Forces and civilian personnel that is*
11 *held under seal of the court.*

12 *(2) GRAND JURY INFORMATION.—*

13 *(A) IN GENERAL.—The Review Board may*
14 *request the Attorney General to petition any*
15 *court of the United States to release any infor-*
16 *mation relevant to loss, fate, or status of missing*
17 *Armed Forces and civilian personnel that is held*
18 *under the injunction of secrecy of a grand jury.*

19 *(B) TREATMENT.—A request for disclosure*
20 *of missing Armed Forces and civilian personnel*
21 *materials under this Act shall be deemed to con-*
22 *stitute a showing of particularized need under*
23 *rule 6 of the Federal Rules of Criminal Proce-*
24 *dure.*

1 **(b) SENSE OF CONGRESS.**—*It is the sense of Congress*
2 *that—*

3 **(1)** *the Attorney General should assist the Re-*
4 *view Board in good faith to unseal any records that*
5 *the Review Board determines to be relevant and held*
6 *under seal by a court or under the injunction of se-*
7 *crecy of a grand jury;*

8 **(2)** *the Secretary of State should—*

9 **(A)** *contact the Governments of the Russian*
10 *Federation, the People’s Republic of China, and*
11 *the Democratic People’s Republic of Korea to*
12 *seek the disclosure of all records in their respec-*
13 *tive custody, possession, or control relevant to the*
14 *loss, fate, or status of missing Armed Forces and*
15 *civilian personnel; and*

16 **(B)** *contact any other foreign government*
17 *that may hold information relevant to the loss,*
18 *fate, or status of missing Armed Forces and ci-*
19 *vilian personnel, and seek disclosure of such in-*
20 *formation; and*

21 **(3)** *all agencies should cooperate in full with the*
22 *Review Board to seek the disclosure of all information*
23 *relevant to the loss, fate, or status of missing Armed*
24 *Forces and civilian personnel consistent with the pub-*
25 *lic interest.*

1 **SEC. 11. RULES OF CONSTRUCTION.**

2 (a) *PRECEDENCE OVER OTHER LAW.*—When this Act
3 requires transmission of a record to the Archivist or public
4 disclosure, it shall take precedence over any other law (ex-
5 cept section 6103 of the Internal Revenue Code of 1986),
6 judicial decision construing such law, or common law doc-
7 trine that would otherwise prohibit such transmission or
8 disclosure, with the exception of deeds governing access to
9 or transfer or release of gifts and donations of records to
10 the United States Government.

11 (b) *FREEDOM OF INFORMATION ACT.*—Nothing in this
12 Act shall be construed to eliminate or limit any right to
13 file requests with any Executive agency or seek judicial re-
14 view of the decisions under section 552 of title 5, United
15 States Code.

16 (c) *JUDICIAL REVIEW.*—Nothing in this Act shall be
17 construed to preclude judicial review under chapter 7 of
18 title 5, United States Code, of final actions taken or re-
19 quired to be taken under this Act.

20 (d) *EXISTING AUTHORITY.*—Nothing in this Act re-
21 vokes or limits the existing authority of the President, any
22 Executive agency, the Senate, or the House of Representa-
23 tives, or any other entity of the Government to publicly dis-
24 close records in its custody, possession, or control.

25 (e) *RULES OF THE SENATE AND HOUSE OF REP-*
26 *RESENTATIVES.*—To the extent that any provision of this

1 *Act establishes a procedure to be followed in the Senate or*
2 *the House of Representatives, such provision is adopted—*

3 (1) *as an exercise of the rulemaking power of the*
4 *Senate and House of Representatives, respectively,*
5 *and is deemed to be part of the rules of each House,*
6 *respectively, but applicable only with respect to the*
7 *procedure to be followed in that House, and it super-*
8 *sedes other rules only to the extent that it is incon-*
9 *sistent with such rules; and*

10 (2) *with full recognition of the constitutional*
11 *right of either House to change the rules (so far as*
12 *they relate to the procedure of that House) at any*
13 *time, in the same manner, and to the same extent as*
14 *in the case of any other rule of that House.*

15 **SEC. 12. REQUESTS FOR EXTENSIONS.**

16 *The head of a Government office required to comply*
17 *with a deadline under this Act that is based off the date*
18 *of establishment of a quorum of the members of the Missing*
19 *Armed Forces and Civilian Personnel Records Review*
20 *Board under section 7 may request an extension from the*
21 *Board for good cause. If the Board agrees to the request,*
22 *the deadline applicable to the Government office for the pur-*
23 *pose of such requirement shall be such later date as the*
24 *Board may determine appropriate.*

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

2 (a) *PROVISIONS PERTAINING TO THE REVIEW*
3 *BOARD.*—*The provisions of this Act that pertain to the ap-*
4 *pointment and operation of the Review Board shall cease*
5 *to be effective when the Review Board and the terms of its*
6 *members have terminated under section 7(o).*

7 (b) *OTHER PROVISIONS.*—*The remaining provisions of*
8 *this Act shall continue in effect until such time as the Archi-*
9 *ivist certifies to the President and Congress that all missing*
10 *Armed Forces and civilian personnel records have been*
11 *made available to the public in accordance with this Act.*

12 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

13 *There are authorized to be appropriated such sums as*
14 *are necessary to carry out this Act, to remain available*
15 *until expended.*

16 **SEC. 15. SEVERABILITY.**

17 *If any provision of this Act, or the application thereof*
18 *to any person or circumstance, is held invalid, the remain-*
19 *der of this Act and the application of that provision to other*
20 *persons not similarly situated or to other circumstances*
21 *shall not be affected by the invalidation.*

Calendar No. 730

118TH CONGRESS
2^D SESSION

S. 2315

[Report No. 118-310]

A BILL

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

DECEMBER 19 (legislative day, DECEMBER 16), 2024
Reported with an amendment