

112TH CONGRESS  
1ST SESSION

# S. 1732

To amend section 552a of title 5, United States Code (commonly referred to as the Privacy Act), the E-Government Act of 2002 (Public Law 107–347), and chapters 35 and 36 of title 44, United States Code, and other provisions of law to modernize and improve Federal privacy laws.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2011

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To amend section 552a of title 5, United States Code (commonly referred to as the Privacy Act), the E-Government Act of 2002 (Public Law 107–347), and chapters 35 and 36 of title 44, United States Code, and other provisions of law to modernize and improve Federal privacy laws.

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 “Privacy Act Mod-  
5 ernization for the Information Age Act of 2011”.

1 **SEC. 2. AMENDMENTS TO THE PRIVACY ACT.**

2 (a) DEFINITIONS.—Section 552a(a) of title 5, United  
3 States Code (commonly referred to as the Privacy Act),  
4 is amended—

5 (1) in paragraph (4), by striking “that is main-  
6 tained by an agency, including, but not limited to,  
7 his” and inserting “, including”;

8 (2) by striking paragraph (5) and inserting the  
9 following:

10 “(5) the term ‘system of records’ means a  
11 group of any records maintained by, or otherwise  
12 under the control of any agency that is used for any  
13 authorized purpose by or on behalf of the agency;”;

14 (3) by striking paragraph (7) and inserting the  
15 following:

16 “(7) the term ‘routine use’ means, with respect  
17 to the disclosure of a record, the use of such record  
18 for a purpose which, as determined by the agency,  
19 is compatible with the purpose for which it was col-  
20 lected and is appropriate and reasonably necessary  
21 for the efficient and effective conduct of Govern-  
22 ment;”;

23 (4) in paragraph (8)(A)(i)—

24 (A) by striking “two or more automated  
25 systems of records or a system of records with

1 non-Federal records” and inserting “data from  
2 a system of records”;

3 (B) in subclause (I), by inserting “or  
4 State” after “Federal”; and

5 (C) in subclause (II), by inserting “or  
6 State” after “Federal”.

7 (b) CONDITIONS OF DISCLOSURE.—Section 552a(b)  
8 of title 5, United States Code, is amended—

9 (1) in paragraph (1), by inserting “that is con-  
10 sistent with, and related to, any purpose described  
11 under subsection (e)(2)(D) of this section” before  
12 the semicolon;

13 (2) in paragraph (3), by striking “(e)(4)(D)”  
14 and inserting “(e)(2)(D)(iv) or subsection (v)”;

15 (3) in paragraph (6), by inserting “or for  
16 records management inspections authorized by stat-  
17 ute” before the semicolon;

18 (4) in paragraph (7), by inserting “, notwith-  
19 standing any requirements of a routine use as de-  
20 fined under subsection (a)(7),” before “to another  
21 agency”;

22 (5) in paragraph (8), by striking “upon such  
23 disclosure notification is transmitted to the last  
24 known address of such individual” and inserting “a

1 reasonable attempt to notify the individual is made  
2 promptly after the disclosure”; and

3 (6) by striking paragraph (9) and inserting the  
4 following:

5 “(9)(A) to either House of Congress;

6 “(B) to the extent of matter within its jurisdic-  
7 tion, any committee or subcommittee thereof, any  
8 joint committee of Congress or subcommittee of any  
9 such joint committee; or

10 “(C) to the office of a Member of Congress  
11 when that office is requesting records about a spe-  
12 cific individual on behalf of that individual in re-  
13 sponse to a written request for assistance by that in-  
14 dividual;”.

15 (c) ACCOUNTING OF CERTAIN DISCLOSURES.—Sec-  
16 tion 552a(c) of title 5, United States Code, is amended  
17 by inserting “whether in an electronic or other format”  
18 after “system of records under its control”.

19 (d) AGENCY REQUIREMENTS.—Section 552a of title  
20 5, United States Code, is amended by striking subsection  
21 (e) and inserting the following:

22 “(e) AGENCY REQUIREMENTS.—

23 “(1) AUTHORIZED PURPOSE.—No agency shall  
24 use a record except for an authorized purpose and

1 as maintained in a system of records under this sec-  
2 tion.

3 “(2) REQUIREMENTS.—Each agency shall—

4 “(A) maintain in its records only such in-  
5 formation about an individual as is relevant and  
6 necessary to accomplish any specified purpose  
7 of the agency required to be accomplished by  
8 statute or by executive order of the President,  
9 and only retain such information as long as is  
10 necessary to fulfill that purpose or as otherwise  
11 required by law;

12 “(B) collect information to the greatest ex-  
13 tent practicable directly from the subject indi-  
14 vidual when the information may result in ad-  
15 verse determinations about an individual’s  
16 rights, benefits, and privileges;

17 “(C) inform each individual whom it asks  
18 to supply information creating a record, at the  
19 time the information is requested—

20 “(i) the authority (whether granted by  
21 statute or by executive order of the Presi-  
22 dent) which authorizes the solicitation of  
23 the information and whether disclosure of  
24 such information is voluntary or required  
25 to receive a right, benefit, or privilege;

1           “(ii) the principal purpose or purposes  
2           for which the information is intended to be  
3           used;

4           “(iii) the routine uses which may be  
5           made of the information, as published  
6           under subparagraph (D)(iv);

7           “(iv) any effects on that individual of  
8           not providing all or any part of the re-  
9           quested information;

10          “(v) the procedures and contact infor-  
11          mation for accessing or correcting such in-  
12          formation; and

13          “(vi) a reference to learning how such  
14          information will be used or disclosed, in-  
15          cluding the simplest access to the current  
16          system of records notice;

17          “(D) subject to the provisions of subpara-  
18          graph (K), publish in the Federal Register,  
19          make broadly accessible to the public through a  
20          centralized website maintained by the Office of  
21          Management and Budget, and link to such cen-  
22          tralized website from each agency’s website,  
23          upon establishment or revision a notice of the  
24          existence and character of the system of  
25          records, which notice shall include—

1           “(i) the name and location of the sys-  
2           tem;

3           “(ii) the categories of individuals on  
4           whom records are maintained in the sys-  
5           tem;

6           “(iii) the categories of records main-  
7           tained in the system;

8           “(iv) any purpose for which the infor-  
9           mation is intended to be used, including  
10          each routine use;

11          “(v) the legal authority for any pur-  
12          pose for which the information is utilized  
13          granted by statute, executive order, or  
14          other authorization;

15          “(vi) the policies and practices of the  
16          agency regarding storage, retrievability, ac-  
17          cess controls, retention, and disposal of the  
18          records;

19          “(vii) the title and business address of  
20          the agency official who is responsible for  
21          the system of records;

22          “(viii) the agency procedures whereby  
23          an individual can be notified at his request  
24          if the system of records contains a record  
25          pertaining to him, how he can gain access

1 to such a record, or contest its content;  
2 and

3 “(ix) the sources of records in the sys-  
4 tem;

5 “(E) to the greatest extent practicable, en-  
6 sure that all records, including records from a  
7 third party source, which are used by the agen-  
8 cy in making any determination about an indi-  
9 vidual are of such accuracy, relevance, timeli-  
10 ness, and completeness as is reasonably nec-  
11 essary to assure fairness to the individual in the  
12 determination, and upon request of the indi-  
13 vidual, provide documentation of the same;

14 “(F) prior to disseminating any record  
15 about an individual to any person other than an  
16 agency, unless the dissemination is made pursu-  
17 ant to subsection (b)(2) of this section, make  
18 reasonable efforts to assure that such records  
19 are accurate, complete, timely, and relevant for  
20 agency purposes;

21 “(G) maintain no record describing how  
22 any individual exercises rights guaranteed by  
23 the First Amendment unless expressly author-  
24 ized by statute or by the individual about whom  
25 the record is maintained or unless pertinent to,



1 and within the scope of, an authorized law en-  
2 forcement activity;

3 “(H) make reasonable efforts to notify an  
4 individual as promptly as practicable after the  
5 agency receives compulsory legal process for  
6 any record on the individual, unless that notifi-  
7 cation is prohibited by law or court order;

8 “(I) establish rules of conduct for persons  
9 involved in the design, development, operation,  
10 or maintenance of any system of records, or in  
11 maintaining any record, and instruct each such  
12 person with respect to such rules and the re-  
13 quirements of this section, including any other  
14 rules and procedures adopted pursuant to this  
15 section and the penalties for noncompliance;

16 “(J) establish appropriate administrative,  
17 technical, and physical safeguards to insure the  
18 security and confidentiality of records and to  
19 protect against any anticipated threats or haz-  
20 ards to their security or integrity which could  
21 result in substantial harm, embarrassment, in-  
22 convenience, or unfairness to any individual on  
23 whom information is maintained;

1           “(K) in regards to the establishment or re-  
2           vision of a system of records under subpara-  
3           graph (D)—

4                   “(i) at least 30 days prior to creation  
5                   or modification of a system of records,  
6                   publish the entire text of the proposed sys-  
7                   tem of records notice in the Federal Reg-  
8                   ister and on the centralized website estab-  
9                   lished under subparagraph (D);

10                   “(ii) provide an opportunity for inter-  
11                   ested persons to submit written or elec-  
12                   tronic data, views, or arguments to the  
13                   agency regarding the proposed system of  
14                   records notice;

15                   “(iii) within 180 days after publica-  
16                   tion of a proposed system of records no-  
17                   tice, publish on the centralized website es-  
18                   tablished under subparagraph (D), a re-  
19                   sponse to the comments received, along  
20                   with notice of whether the system of  
21                   records notice as published has taken ef-  
22                   fect; and

23                   “(iv) provide a link to the centralized  
24                   website from the website of the agency,

1 unless the Director of the Office of Manage-  
2 ment and Budget, through the Federal Chief  
3 Privacy Officer grants an exception, and that  
4 exception is published promptly in the Federal  
5 Register and on the centralized website estab-  
6 lished under subparagraph (D), including a link  
7 from the agency’s website;

8 “(L) if such agency is a recipient agency  
9 or a source agency in a matching program with  
10 a non-Federal agency, with respect to any es-  
11 tablishment or revision of a matching program,  
12 at least 30 days prior to conducting such pro-  
13 gram, publish in the Federal Register notice of  
14 such establishment or revision;

15 “(M) shall—

16 “(i) maintain an inventory on the  
17 number and scope of the systems of  
18 records of that agency in a manner that  
19 clearly and fairly describes activities of the  
20 agency to individuals; and

21 “(ii) ensure that the inventory—

22 “(I) is annually updated and  
23 published in the Federal Register, on  
24 the website established under sub-

1 paragraph (D), and on the agency’s  
2 website; and

3 “(II) does not contain any infor-  
4 mation that would be exempted from  
5 disclosure under this section or sec-  
6 tion 522 of this title; and

7 “(N) make reasonable efforts to limit dis-  
8 closure from a system of records to minimum  
9 information necessary to accomplish the pur-  
10 pose of the disclosure.”.

11 (e) AGENCY RULES.—Section 552a(f) of title 5,  
12 United States Code, is amended in the last sentence—

13 (1) by striking “biennially” and inserting “an-  
14 nually”;

15 (2) by striking “subsection (e)(4)” and insert-  
16 ing “subsection (e)(2)(D)(iv)”; and

17 (3) by striking “at low cost” and inserting  
18 “electronically, or at low cost physically”.

19 (f) CIVIL REMEDIES.—Section 552a(g)(4) is amend-  
20 ed—

21 (1) by inserting “and in which the complainant  
22 has substantially prevailed” after “the agency acted  
23 in a manner which was intentional or willful”; and

24 (2) in subparagraph (A), by striking “, but in  
25 no case shall a person entitled to recovery receive

1 less than the sum of \$1,000” and inserting “or the  
2 sum of \$1,000, whichever is greater, except that in  
3 a class action the minimum for each individual shall  
4 be reduced as necessary to ensure that the total re-  
5 covery in any class action or series of class actions  
6 arising out of the same refusal or failure to comply  
7 by the same agency shall not be greater than  
8 \$10,000,000”.

9 (g) CRIMINAL PENALTIES.—Section 552a(i) of title  
10 5, United States Code, is amended—

11 (1) in paragraph (1)—

12 (A) by inserting “(A)” before “Any officer  
13 or employee”; and

14 (B) by adding at the end the following:

15 “(B) A person who commits the offense  
16 described under subparagraph (A) with the in-  
17 tent to sell, transfer, or use an agency record  
18 for commercial advantage, personal gain, or  
19 malicious harm shall be fined not more than  
20 \$250,000, imprisoned for not more than 10  
21 years, or both.”; and

22 (2) in paragraph (3), by striking “misdemeanor  
23 and fined not more than \$5,000” and inserting “fel-  
24 ony and fined not more than \$100,000, imprisoned  
25 for not more than 5 years, or both”.

1           (h) GENERAL EXEMPTIONS.—Section 552a(j) of title  
2 5, United States Code, is amended by striking “The head  
3 of any agency” and inserting “Notwithstanding any re-  
4 quirements of a routine use as defined under subsection  
5 (a)(7), the head of any agency”.

6           (i) SPECIFIC EXEMPTIONS.—Section 552a(k) of title  
7 5, United States Code, is amended by striking “The head  
8 of any agency” and inserting “Notwithstanding any re-  
9 quirements of a routine use as defined under subsection  
10 (a)(7), the head of any agency”.

11          (j) ARCHIVAL RECORDS.—Section 552a(l) of title 5,  
12 United States Code, is amended in paragraphs (2) and  
13 (3) by striking “National Archives of the United States”  
14 each place that term appears and inserting “National Ar-  
15 chives and Records Administration”.

16          (k) GOVERNMENT CONTRACTORS.—Section  
17 552(m)(1) of title 5, United States Code, is amended by  
18 striking “for the operation by or on behalf of the agency  
19 of a system of records to accomplish an agency function”  
20 and inserting “or other agreement, including with another  
21 agency, for the maintenance of a system of records to ac-  
22 complish an agency function on behalf of the agency”.

23          (l) OFFICE OF MANAGEMENT AND BUDGET RESPON-  
24 SIBILITIES.—Section 552a(v) of title 5, United States  
25 Code, is amended—

1 (1) in paragraph (1), by striking “and” after  
2 the semicolon;

3 (2) in paragraph (2), by striking the period and  
4 inserting “; and”; and

5 (3) by adding at the end the following:

6 “(3) establish and update a list of rec-  
7 ommended standard routine uses.”.

8 **SEC. 3. AMENDMENTS TO THE E-GOVERNMENT ACT OF**  
9 **2002.**

10 Section 208 of the E-Government Act of 2002 (44  
11 U.S.C. 3501 note; Public Law 107–347) is amended—

12 (1) in subsection (b)—

13 (A) in paragraph (1)(A)—

14 (i) by striking clause (i) and inserting  
15 the following:

16 “(i) developing, procuring, or other-  
17 wise making use of information technology  
18 that collects, maintains, or disseminates  
19 personally identifiable information; or”;

20 (ii) in clause (ii)(II)—

21 (I) by striking “information in an  
22 identifiable form” and inserting “per-  
23 sonally identifiable information”; and

24 (II) by striking “, other than  
25 agencies, instrumentalities, or employ-

1           ees of the Federal Government.” and  
2           inserting “; and”; and

3           (iii) by adding at the end the fol-  
4           lowing:

5           “(iii) using personally identifiable in-  
6           formation purchased, or subscribed to for a  
7           fee, from a commercial data source.”; and  
8           (B) in paragraph (2)(B)—

9           (i) in clause (i), by striking “informa-  
10          tion that is in an identifiable form” and in-  
11          serting “personally identifiable informa-  
12          tion”; and

13          (ii) in clause (ii)—

14               (I) in subclause (VI), by striking  
15               “and” at the end;

16               (II) in subclause (VII), by strik-  
17               ing the period and inserting “; and”;  
18               and

19               (III) by adding at the end the  
20               following:

21                       “(VIII) to what extent risks to  
22                       privacy protection are created by the  
23                       use of the information and what steps  
24                       have been taken to mitigate such  
25                       risks.”; and



1           (2) by striking subsection (d) and inserting the  
2 following:

3           “(d) DEFINITION.—In this section, the term ‘person-  
4 ally identifiable information’ means any information about  
5 an individual maintained by an agency, including—

6           “(1) any information that can be used to distin-  
7 guish or trace an individual’s identity, such as name,  
8 social security number, date and place of birth,  
9 mother’s maiden name, or biometric records; or

10           “(2) any other information that is linked or  
11 linkable to an individual, such as medical, edu-  
12 cational, financial, and employment information.”.

13 **SEC. 4. AMENDMENTS TO CHAPTERS 35 AND 36 OF TITLE 44,**  
14 **UNITED STATES CODE.**

15           (a) OFFICE OF MANAGEMENT AND BUDGET.—Sec-  
16 tion 3504 of title 44, United States Code, is amended—

17           (1) in subsection (a)(1)(A)—

18           (A) in clause (iv), by inserting “and” after  
19 the semicolon;

20           (B) by striking clause (v); and

21           (C) by redesignating clause (vi) as clause  
22 (v);

23           (2) by striking subsection (g); and

24           (3) by redesignating subsection (h) as sub-  
25 section (g).

1 (b) FEDERAL INFORMATION PRIVACY POLICY.—

2 (1) IN GENERAL.—Chapter 35 of title 44,  
3 United States Code, is amended by adding at the  
4 end the following:

5 “SUBCHAPTER IV—FEDERAL INFORMATION  
6 PRIVACY POLICY

7 “§ 3561. Purposes

8 “The purposes of this subchapter are to—

9 “(1) ensure the consistent application of privacy  
10 protections to personally identifiable information col-  
11 lected, maintained, and used by all agencies;

12 “(2) strengthen the responsibility and account-  
13 ability of the Office of Management and Budget for  
14 overseeing privacy protection in agencies;

15 “(3) improve agency responses to privacy  
16 breaches to better inform and protect the public  
17 from the misuse of personally identifiable informa-  
18 tion;

19 “(4) strengthen the responsibility and account-  
20 ability of agency officials for ensuring effective im-  
21 plementation of privacy protection requirements; and

22 “(5) ensure that agency use of commercial  
23 sources of information and information system serv-  
24 ices provides adequate information security and pri-  
25 vacy protections.

1 **“§ 3562. Definitions**

2       “(a) IN GENERAL.—Except as provided under sub-  
3 section (b), the definitions under section 3502 shall apply  
4 to this subchapter.

5       “(b) ADDITIONAL DEFINITIONS.—In this sub-  
6 chapter—

7               “(1) the term ‘Council’ means the Chief Privacy  
8 Officers Council established under section 3567;

9               “(2) the term ‘personally identifiable informa-  
10 tion’ means any information about an individual  
11 maintained by an agency, including—

12                       “(A) any information that can be used to  
13 distinguish or trace an individual’s identity,  
14 such as name, social security number, date and  
15 place of birth, mother’s maiden name, or bio-  
16 metric records; and

17                       “(B) any other information that is linked  
18 or linkable to an individual, such as medical,  
19 educational, financial, and employment informa-  
20 tion; and

21               “(3) the term ‘data broker’ means a person or  
22 entity that for a fee regularly engages in the practice  
23 of collecting, transmitting, or providing access to  
24 personally identifiable information concerning more  
25 than 5,000 individuals who are not the customers or  
26 employees of that person or entity (or an affiliated

1       entity) primarily for the purposes of providing such  
2       information to non-affiliated third parties on an  
3       interstate basis.

4       **“§ 3563. Authority and functions of the Director**

5       “(a) In fulfilling the responsibility to administer the  
6       functions assigned under subchapter I, the Director of the  
7       Office of Management and Budget shall comply with this  
8       subchapter with respect to the specific matters covered by  
9       this subchapter.

10       “(b) The Director shall oversee agency privacy pro-  
11       tection policies and practices, including by—

12               “(1) developing and overseeing the implementa-  
13               tion of policies, principles, standards, and guidelines  
14               on privacy protection;

15               “(2) providing direction and overseeing privacy,  
16               confidentiality, security, disclosure, and sharing of  
17               information;

18               “(3) overseeing agency compliance with laws re-  
19               lating to privacy protection, including the require-  
20               ments of this subchapter, section 552a of title 5  
21               (commonly referred to as the Privacy Act), and sec-  
22               tion 208 of the E-Government Act of 2002;

23               “(4) coordinating privacy protection policies  
24               and procedures with related information resources  
25               management policies and procedures, including

1 through ensuring that privacy protection consider-  
2 ations are taken into account in managing the col-  
3 lection of information and the control of paperwork  
4 as provided under subchapter I; and

5 “(5) appointing a Federal Chief Privacy Officer  
6 under section 3564.

7 **“§ 3564. Specific responsibilities of the Federal Chief**  
8 **Privacy Officer**

9 “(a) FEDERAL CHIEF PRIVACY OFFICER.—

10 “(1) DEFINITIONS.—In this section—

11 “(A) the term ‘Senior Executive Service  
12 position’ has the meaning given under section  
13 3132(a)(2) of title 5; and

14 “(B) the term ‘noncareer appointee’ has  
15 the meaning given under section 3132(a)(7) of  
16 title 5.

17 “(2) ESTABLISHMENT.—There is established  
18 the position of the Federal Chief Privacy Officer  
19 within the Office of Management and Budget. The  
20 position shall be a Senior Executive Service position.  
21 The Director shall appoint a noncareer appointee to  
22 the position. The primary responsibilities of the posi-  
23 tion shall be the responsibilities under subsection  
24 (b).

1           “(3) QUALIFICATIONS.—The individual ap-  
2           pointed to be the Federal Chief Privacy Officer shall  
3           possess demonstrated expertise in privacy protection  
4           policy and Government information.

5           “(b) RESPONSIBILITIES.—The Federal Chief Privacy  
6           Officer shall—

7           “(1) carry out the responsibilities of the Direc-  
8           tor under this subchapter;

9           “(2) provide overall direction, consistent with  
10          the Office of Management and Budget guidance,  
11          section 552a of title 5 (commonly referred to as the  
12          Privacy Act), and section 208 of the E-Government  
13          Act of 2002, of privacy policy governing the Federal  
14          Government’s collection, use, sharing, disclosure,  
15          transfer, storage, security, and disposition of person-  
16          ally identifiable information;

17          “(3) to the extent that the Federal Chief Pri-  
18          vacy Officer considers appropriate, establish proce-  
19          dures to review and approve privacy documentation  
20          before public dissemination;

21          “(4) serve as the principal advisor for Federal  
22          privacy policy matters to the Executive Office of the  
23          President, including the President, the Director, the  
24          National Security Council, the Homeland Security

1 Council, and the Office of Science and Technology  
2 Policy;

3 “(5) coordinate with the Privacy and Civil Lib-  
4 erties Oversight Board established under section  
5 1061 of the Intelligence Reform and Terrorism Pre-  
6 vention Act of 2004 (5 U.S.C. 601 note); and

7 “(6) every 2 years submit a report to Congress  
8 on the protection of privacy by the United States  
9 Government, including the status of implementation  
10 of requirements under this subchapter and other pri-  
11 vacy related laws and policies.

12 **“§ 3565. Privacy breach requirements**

13 “The Director shall establish and oversee policies and  
14 procedures for agencies to follow in the event of a breach  
15 of information security involving the disclosure of person-  
16 ally identifiable information and for which harm to an in-  
17 dividual could reasonably be expected to result, includ-  
18 ing—

19 “(1) a requirement for timely notice to be pro-  
20 vided to those individuals whose personally identifi-  
21 able information could be compromised as a result of  
22 such breach, except no notice shall be required if the  
23 breach does not create a reasonable risk of identity  
24 theft, fraud, or other unlawful conduct regarding  
25 such individual;

1           “(2) guidance on determining how timely notice  
2 is to be provided;

3           “(3) guidance regarding whether additional ac-  
4 tions are necessary and appropriate, including data  
5 breach analysis, fraud resolution services, identity  
6 theft insurance, and credit protection or monitoring  
7 services; and

8           “(4) requirements for timely reporting by the  
9 agencies of such breaches to the director and the  
10 Federal information security incident center referred  
11 to in section 3546.

12 **“§ 3566. Agency responsibilities**

13           “(a) IN GENERAL.—In addition to requirements  
14 under section 1062 of the National Security Intelligence  
15 Reform Act of 2004, and in fulfilling the responsibilities  
16 under section 3506(g), the head of each agency shall en-  
17 sure compliance with laws relating to privacy protection,  
18 including the requirements of this subchapter, section  
19 552a of title 5 (commonly referred to as the Privacy Act),  
20 and section 208 of the E-Government Act of 2002.

21           “(b) CHIEF PRIVACY OFFICERS.—In the case of an  
22 agency that has not designated a Chief Privacy Officer  
23 under section 522 of the Transportation, Treasury, Inde-  
24 pendent Agencies and General Government Appropria-



1 tions Act, 2005 (42 U.S.C. 2000ee-2), the head of each  
2 agency shall—

3 “(1) designate a senior official to be the chief  
4 privacy officer of that agency; and

5 “(2) provide to the chief privacy officer such in-  
6 formation as the officer considers necessary.

7 “(c) RESPONSIBILITIES OF AGENCY CHIEF PRIVACY  
8 OFFICER.—Each chief privacy officer shall have primary  
9 responsibility for assuring the adequacy of privacy protec-  
10 tions for personally identifiable information collected,  
11 used, or disclosed by the agency, including—

12 “(1) ensuring that the use of technologies sus-  
13 tain, and do not erode, privacy protections relating  
14 to the use, collection, and disclosure of personal in-  
15 formation, including through the conduct of privacy  
16 impact assessments as provided by section 208 of  
17 the E-Government Act of 2002;

18 “(2) ensuring that personal information is han-  
19 dled in full compliance with fair information prac-  
20 tices under section 552a of title 5 (commonly re-  
21 ferred to as the Privacy Act) and other applicable  
22 laws and policies;

23 “(3) evaluating legislative and regulatory pro-  
24 posals involving collection, use, and disclosure of  
25 personally identifiable information;

1           “(4) coordinating with the chief information of-  
2           ficer to ensure that privacy is adequately addressed  
3           in the agency information security program, estab-  
4           lished under section 3544;

5           “(5) coordinating with other senior officials to  
6           ensure programs, policies, and procedures involving  
7           civil rights, civil liberties, and privacy considerations  
8           addressed in an integrated and comprehensive man-  
9           ner; and

10           “(6) reporting periodically to the head of the  
11           agency on agency privacy protection activities.

12   **“§ 3567. Chief Privacy Officers Council**

13           “(a) ESTABLISHMENT.—There is established in the  
14           executive branch a Chief Privacy Officers Council.

15           “(b) MEMBERSHIP.—

16           “(1) IN GENERAL.—The members of the Coun-  
17           cil shall be as follows:

18                   “(A) The Federal Chief Privacy Officer,  
19                   who shall serve as chairperson of the Council.

20                   “(B) Chief Privacy Officers established  
21                   under section 522 of division H of the Consoli-  
22                   dated Appropriations Act, 2005 (42 U.S.C.  
23                   2000ee-2; Public Law 108-447).

24                   “(C) The chairperson of the Privacy and  
25                   Civil Liberties Oversight Board.

1           “(D) As designated by the chairperson of  
2           the Council, any senior agency official des-  
3           ignated to be a chief privacy officer under sec-  
4           tion 3566.

5           “(E) The Administrator of the Office of  
6           Electronic Government, as an ex-officio mem-  
7           ber.

8           “(F) The Administrator of the Office of  
9           Information and Regulatory Affairs, as an ex-  
10          officio member.

11          “(G) Any other officer or employee of the  
12          United States designated by the chairperson.

13          “(2) EX-OFFICIO MEMBERS.—An ex-officio  
14          member may not vote in Council proceedings.

15          “(c) ADMINISTRATIVE SUPPORT.—The Adminis-  
16          trator of the General Services shall provide administrative  
17          and other support for the Council.

18          “(d) FUNCTIONS.—The Council shall—

19                 “(1) be an interagency forum for establishing  
20                 best practices for agency privacy policy;

21                 “(2) share, and promote the development of,  
22                 best practices to assure that the use of technologies  
23                 sustains, and does not erode, privacy protections re-  
24                 lating to the use, collection, and disclosure of per-  
25                 sonal information; assure that personal information

1 contained in systems of records are handled in full  
 2 compliance with fair information practices; and  
 3 evaluate legislative and regulatory proposals involv-  
 4 ing collection, use, and disclosure of personal infor-  
 5 mation by the Federal Government; and

6 “(3) submit proposed improvements to privacy  
 7 practices to the Director.”.

8 (2) TECHNICAL AND CONFORMING AMEND-  
 9 MENT.—The table of sections for chapter 35 of title  
 10 44, United States Code, is amended by adding at  
 11 the end the following:

“SUBCHAPTER IV—FEDERAL INFORMATION PRIVACY POLICY

“Sec.

“3561. Purposes.

“3562. Definitions.

“3563. Authority and functions of the Director.

“3564. Specific responsibilities of the Chief Privacy Officer.

“3565. Privacy breach requirements.

“3566. Agency responsibilities.

“3567. Chief Privacy Officers Council.”.

12 (c) ELECTRONIC GOVERNMENT.—Section 3602(d) of  
 13 title 44, United States Code, is amended by inserting “and  
 14 the Federal Chief Privacy Officer” after “Information and  
 15 Regulatory Affairs”.

16 **SEC. 5. AMENDMENTS TO SECTION 1062 OF THE NATIONAL**  
 17 **INTELLIGENCE REFORM ACT OF 2004.**

18 Section 1062 of the National Intelligence Reform Act  
 19 of 2004 (42 U.S.C. 2000ee–1) is amended—

20 (1) by redesignating subsection (d) through (h)  
 21 as subsections (e) through (i); and

1           (2) by striking subsection (c) and inserting the  
2 following:

3           “(c) AUTHORITY TO INVESTIGATE.—

4           “(1) IN GENERAL.—Each privacy officer or civil  
5 liberties officer described under subsection (a) or (b)  
6 may—

7           “(A) have access to all records, reports,  
8 audits, reviews, documents, papers, rec-  
9 ommendations, and other materials available to  
10 the Department, agency, or element of the execu-  
11 tive branch that relate to programs and oper-  
12 ations with respect to the responsibilities of the  
13 senior official under this section;

14           “(B) make such investigations and reports  
15 relating to the administration of the programs  
16 and operations of the Department, agency, or  
17 element of the executive branch as are, in the  
18 senior official’s judgment, necessary or desir-  
19 able;

20           “(C) subject to the approval of the Sec-  
21 retary or head of the agency or element of the  
22 executive branch, require by subpoena the pro-  
23 duction, by any person other than a Federal  
24 agency, of all information, documents, reports,  
25 answers, records, accounts, papers, and other

1 data and documentary evidence necessary to  
2 performance of the responsibilities of the senior  
3 official under this section; and

4 “(D) administer to or take from any per-  
5 son an oath, affirmation, or affidavit, whenever  
6 necessary to performance of the responsibilities  
7 of the senior official under this section.

8 “(2) ENFORCEMENT OF SUBPOENAS.—Any sub-  
9 poena issued under paragraph (1)(C) shall, in the  
10 case of contumacy or refusal to obey, be enforceable  
11 by order of any appropriate United States district  
12 court.

13 “(3) EFFECT OF OATHS.—Any oath, affirma-  
14 tion, or affidavit administered or taken under para-  
15 graph (1)(D) by or before an employee of the Pri-  
16 vacy Office designated for that purpose by the senior  
17 official appointed under subsection (a) shall have the  
18 same force and effect as if administered or taken by  
19 or before an officer having a seal of office.

20 “(d) SUPERVISION AND COORDINATION.—

21 “(1) IN GENERAL.—Each privacy officer or civil  
22 liberties officer described under subsection (a) or (b)  
23 shall—

24 “(A) report to, and be under the general  
25 supervision of, the Secretary; and

1           “(B) coordinate activities with the Inspec-  
2           tor General of the Department in order to avoid  
3           duplication of effort.

4           “(2) COORDINATION WITH THE INSPECTOR  
5           GENERAL.—

6           “(A) IN GENERAL.—Except as provided in  
7           subparagraph (B), the senior official appointed  
8           under subsection (a) may investigate any mat-  
9           ter relating to possible violations or abuse con-  
10          cerning the administration of any program or  
11          operation of the Department, agency, or ele-  
12          ment of the executive branch relevant to the  
13          purposes under this section.

14          “(B) COORDINATION.—

15                 “(i) REFERRAL.—Before initiating  
16                 any investigation described under subpara-  
17                 graph (A), the senior official shall refer the  
18                 matter and all related complaints, allega-  
19                 tions, and information to the Inspector  
20                 General of the Department, agency, or ele-  
21                 ment of the executive branch.

22                 “(ii) DETERMINATIONS AND NOTIFI-  
23                 CATIONS BY THE INSPECTOR GENERAL.—  
24                 Not later than 30 days after the receipt of

1 a matter referred under clause (i), the In-  
2 spector General shall—

3 “(I) make a determination re-  
4 garding whether the Inspector Gen-  
5 eral intends to initiate an audit or in-  
6 vestigation of the matter referred  
7 under clause (i); and

8 “(II) notify the senior official of  
9 that determination.”.

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