

111TH CONGRESS  
1ST SESSION

# H. R. 3969

To extend and modify certain provisions of the Foreign Intelligence Surveillance Act of 1978 relating to combating terrorism.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 2009

Mr. REYES (for himself, Mr. HASTINGS of Florida, Mr. RUPPERSBERGER, and Mr. BOREN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Financial Services and Select Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To extend and modify certain provisions of the Foreign Intelligence Surveillance Act of 1978 relating to combating terrorism.

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 “Counterterrorism Au-  
5 thorities Improvements Act of 2009”.

1 **SEC. 2. EXTENSION OF SUNSET OF CERTAIN PROVISIONS**  
2 **OF USA PATRIOT ACT.**

3 (a) USA PATRIOT IMPROVEMENT AND REAUTHOR-  
4 IZATION ACT OF 2005.—Section 102(b)(1) of the USA  
5 PATRIOT Improvement and Reauthorization Act of 2005  
6 (18 U.S.C. 2510 note; Public Law 109–177) is amended  
7 by striking “December 31, 2009” and inserting “Decem-  
8 ber 31, 2013”.

9 (b) INTELLIGENCE REFORM AND TERRORISM PRE-  
10 VENTION ACT OF 2004.—Section 6001(b)(1) of the Intel-  
11 ligence Reform and Terrorism Prevention Act of 2004 (50  
12 U.S.C. 1801 note; Public Law 108–458) is amended by  
13 striking “December 31, 2009” and inserting “December  
14 31, 2013”.

15 **SEC. 3. ACCESS TO CERTAIN BUSINESS RECORDS UNDER**  
16 **SECTION 501 OF THE FOREIGN INTEL-**  
17 **LIGENCE SURVEILLANCE ACT OF 1978.**

18 (a) FACTUAL BASIS FOR AND ISSUANCE OF OR-  
19 DERS.—Section 501 of the Foreign Intelligence Surveil-  
20 lance Act of 1978 (50 U.S.C. 1861) is amended—

21 (1) in subsection (b)(2)—

22 (A) in subparagraph (A)—

23 (i) by striking “a statement of facts  
24 showing” and inserting “a statement of  
25 the facts and circumstances relied upon by

1 the applicant to justify the belief of the ap-  
2 plicant”; and

3 (ii) by striking “clandestine intel-  
4 ligence activities,” and all that follows and  
5 inserting “clandestine intelligence activi-  
6 ties;”; and

7 (B) by striking subparagraph (B) and in-  
8 serting the following new subparagraph:

9 “(B) a statement of proposed minimization  
10 procedures.”; and

11 (2) in subsection (c)—

12 (A) in paragraph (1)—

13 (i) by inserting “and that the pro-  
14 posed minimization procedures meet the  
15 definition of minimization procedures  
16 under subsection (g)” after “subsections  
17 (a) and (b)”; and

18 (ii) by striking the second sentence;  
19 and

20 (B) in paragraph (2)—

21 (i) in subparagraph (D), by striking  
22 “and” at the end;

23 (ii) in subparagraph (E), by striking  
24 the period at the end and inserting a semi-  
25 colon; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(F) shall direct that the minimization  
4 procedures be followed; and”.

5 (b) DISCLOSURE OF REQUESTS.—Such section 501  
6 is further amended—

7 (1) in subsection (b)—

8 (A) in paragraph (2)(B), by striking “ap-  
9 plication.” and inserting “application; and”;  
10 and

11 (B) by adding at the end the following new  
12 paragraph:

13 “(3) may include a request that such order pro-  
14 hibit any person from disclosing to any other person  
15 that the Federal Bureau of Investigation has sought  
16 or obtained tangible things pursuant to such order  
17 for a particular period of time, other than in accord-  
18 ance with subsection (d).”;

19 (2) in subsection (c)(2), by adding at the end  
20 the following new subparagraph:

21 “(G) if—

22 “(i) such application includes a re-  
23 quest for a prohibition in accordance with  
24 subsection (b)(3), and

1           “(ii) the judge finds that there is rea-  
2           son to believe that the disclosure of the  
3           order will result in—

4                   “(I) a danger to the national se-  
5                   curity of the United States,

6                   “(II) interference with a crimi-  
7                   nal, counterterrorism, or counterintel-  
8                   ligence investigation,

9                   “(III) interference with diplo-  
10                  matic relations, or

11                  “(IV) danger to the life or phys-  
12                  ical safety of any person,

13           shall prohibit any person from disclosing to any  
14           other person that the Federal Bureau of Inves-  
15           tigation has sought or obtained tangible things  
16           pursuant to such order for an appropriate pe-  
17           riod of time as determined by the judge, except  
18           in accordance with subsection (d).”;

19           (3) in subsection (d)(1)—

20                   (A) by striking “No person” and inserting  
21                   “If an order under this section includes a prohi-  
22                   bition referred to in subsection (c)(2)(G), no  
23                   person”; and

24                   (B) by striking “an order under this sec-  
25                   tion” and inserting “such order during the pe-

1           riod of time such prohibition is effective under  
2           such order”; and

3           (4) in subsection (f)(1)(B), by striking “an  
4           order imposed under subsection (d)” and inserting  
5           “a prohibition referred to in subsection (c)(2)(G) in-  
6           cluded in an order under this section”.

7           (c) AUDIT.—Section 106A of the USA PATRIOT  
8           Improvement and Reauthorization Act of 2005 (Public  
9           Law 109–177; 120 Stat. 200) is amended—

10           (1) in subsection (b)(1), by striking “2006”  
11           and inserting “2013”;

12           (2) in subsection (c), by adding at the end the  
13           following new paragraphs:

14           “(3) CALENDAR YEARS 2007, 2008, AND 2009.—  
15           Not later than December 31, 2010, the Inspector  
16           General of the Department of Justice shall submit  
17           to the Committee on the Judiciary and the Perma-  
18           nent Select Committee on Intelligence of the House  
19           of Representatives and the Committee on the Judici-  
20           ary and the Select Committee on Intelligence of the  
21           Senate a report containing the results of the audit  
22           conducted under this section for calendar years  
23           2007, 2008, and 2009.

24           “(4) CALENDAR YEARS 2010 AND 2011.—Not  
25           later than December 31, 2012, the Inspector Gen-

1       eral of the Department of Justice shall submit to the  
2       Committee on the Judiciary and the Permanent Se-  
3       lect Committee on Intelligence of the House of Rep-  
4       resentatives and the Committee on the Judiciary and  
5       the Select Committee on Intelligence of the Senate  
6       a report containing the results of the audit con-  
7       ducted under this section for calendar years 2010  
8       and 2011.

9               “(5) CALENDAR YEARS 2012 AND 2013.—Not  
10       later than December 31, 2014, the Inspector Gen-  
11       eral of the Department of Justice shall submit to the  
12       Committee on the Judiciary and the Permanent Se-  
13       lect Committee on Intelligence of the House of Rep-  
14       resentatives and the Committee on the Judiciary and  
15       the Select Committee on Intelligence of the Senate  
16       a report containing the results of the audit con-  
17       ducted under this section for calendar years 2012  
18       and 2013.”;

19               (3) in subsection (d)—

20                       (A) in paragraph (1) by striking “sub-  
21                       section (c)(1) or (c)(2)” and inserting “para-  
22                       graph (1), (2), (3), (4), or (5) of subsection  
23                       (c)”;

24                       (B) in paragraph (2), by striking “sub-  
25                       sections (c)(1) and (c)(2)” and inserting “para-

1 graph (1), (2), (3), (4), or (5) of subsection  
2 (c)”; and  
3 (4) in subsection (e), by striking “subsections  
4 (c)(1) and (c)(2)” and inserting “paragraph (1), (2),  
5 (3), (4), or (5) of subsection (c)”.

6 **SEC. 4. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL**  
7 **SECURITY LETTERS.**

8 (a) FISA.—Section 501(f)(2) of the Foreign Intel-  
9 ligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2))  
10 is amended—

11 (1) in subparagraph (A)—

12 (A) in clause (i)—

13 (i) in the first sentence, by striking “a  
14 production order” and inserting “a produc-  
15 tion order or nondisclosure order”; and

16 (ii) in the second sentence, by striking  
17 “Not less than 1 year” and all that fol-  
18 lows; and

19 (B) in clause (ii) in the third sentence, by  
20 striking “production order or nondisclosure”;  
21 and

22 (2) in subparagraph (C)—

23 (A) by striking clause (ii); and

24 (B) by redesignating clause (iii) as clause  
25 (ii).



1 (b) JUDICIAL REVIEW OF NATIONAL SECURITY LET-  
2 TERS.—Section 3511(b) of title 18, United States Code,  
3 is amended to read as follows:

4 “(b) NONDISCLOSURE.—

5 “(1) IN GENERAL.—

6 “(A) NOTICE.—If a recipient of a request  
7 or order for a report, records, or other informa-  
8 tion under section 2709 of this title, section  
9 626 or 627 of the Fair Credit Reporting Act  
10 (15 U.S.C. 1681u and 1681v), section 1114 of  
11 the Right to Financial Privacy Act of 1978 (12  
12 U.S.C. 3414), or section 802 of the National  
13 Security Act of 1947 (50 U.S.C. 436), wishes  
14 to have a court review a nondisclosure require-  
15 ment imposed in connection with the request or  
16 order, the recipient shall notify the Govern-  
17 ment.

18 “(B) APPLICATION.—Not later than 30  
19 days after the date of receipt of a notification  
20 under subparagraph (A), the Government shall  
21 apply for an order prohibiting the disclosure of  
22 the existence or contents of the relevant request  
23 or order. An application under this subpara-  
24 graph may be filed in the district court of the  
25 United States for any district within which the

1 authorized investigation that is the basis for the  
2 request or order is being conducted. The appli-  
3 cable nondisclosure requirement shall remain in  
4 effect during the pendency of proceedings relat-  
5 ing to the requirement.

6 “(C) CONSIDERATION.—A district court of  
7 the United States that receives an application  
8 under subparagraph (B) should rule expedi-  
9 tiously, and shall, subject to paragraph (3),  
10 issue a nondisclosure order that includes condi-  
11 tions appropriate to the circumstances.

12 “(2) APPLICATION CONTENTS.—An application  
13 for a nondisclosure order or extension thereof under  
14 this subsection shall include a certification from the  
15 Attorney General, Deputy Attorney General, an As-  
16 sistant Attorney General, or the Director of the Fed-  
17 eral Bureau of Investigation, or in the case of a re-  
18 quest by a department, agency, or instrumentality of  
19 the Federal Government other than the Department  
20 of Justice, the head or deputy head of the depart-  
21 ment, agency, or instrumentality, containing a state-  
22 ment of specific and articulable facts indicating that,  
23 absent a prohibition of disclosure under this sub-  
24 section, there may result—

1           “(A) a danger to the national security of  
2 the United States;

3           “(B) interference with a criminal, counter-  
4 terrorism, or counterintelligence investigation;

5           “(C) interference with diplomatic relations;

6 or

7           “(D) danger to the life or physical safety  
8 of any person.

9           “(3) STANDARD.—A district court of the  
10 United States shall issue a nondisclosure require-  
11 ment order or extension thereof under this sub-  
12 section if the court determines, giving substantial  
13 weight to the certification under paragraph (2) that  
14 there is reason to believe that disclosure of the infor-  
15 mation subject to the nondisclosure requirement dur-  
16 ing the applicable time period will result in—

17           “(A) a danger to the national security of  
18 the United States;

19           “(B) interference with a criminal, counter-  
20 terrorism, or counterintelligence investigation;

21           “(C) interference with diplomatic relations;

22 or

23           “(D) danger to the life or physical safety  
24 of any person.”.

1           (c) MINIMIZATION.—Section 501(g)(1) of the For-  
2 eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
3 1861(g)(1)) is amended by striking “Not later than” and  
4 all that follows and inserting “At or before the end of the  
5 period of time for the production of tangible things under  
6 an order approved under this section or at any time after  
7 the production of tangible things under an order approved  
8 under this section, a judge may assess compliance with  
9 the minimization procedures by reviewing the cir-  
10 cumstances under which information concerning United  
11 States persons was retained or disseminated.”.

12 **SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECUR-**  
13 **RITY LETTERS.**

14           (a) IN GENERAL.—Section 2709 of title 18, United  
15 States Code, is amended by striking subsection (c) and  
16 inserting the following:

17           “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

18                   “(1) PROHIBITION.—

19                           “(A) IN GENERAL.—If a certification is  
20 issued under subparagraph (B) and notice of  
21 the right to judicial review under paragraph (3)  
22 is provided, no wire or electronic communica-  
23 tion service provider, or officer, employee, or  
24 agent thereof, that receives a request under  
25 subsection (a), shall disclose to any person that

1 the Director of the Federal Bureau of Inves-  
2 tigation has sought or obtained access to infor-  
3 mation or records under this section.

4 “(B) CERTIFICATION.—The requirements  
5 of subparagraph (A) shall apply if the Director  
6 of the Federal Bureau of Investigation, or a  
7 designee of the Director whose rank shall be no  
8 lower than Deputy Assistant Director at Bu-  
9 reau headquarters or a Special Agent in Charge  
10 of a Bureau field office, certifies that, absent a  
11 prohibition of disclosure under this subsection,  
12 there may result—

13 “(i) a danger to the national security  
14 of the United States;

15 “(ii) interference with a criminal,  
16 counterterrorism, or counterintelligence in-  
17 vestigation;

18 “(iii) interference with diplomatic re-  
19 lations; or

20 “(iv) danger to the life or physical  
21 safety of any person.

22 “(2) EXCEPTION.—

23 “(A) IN GENERAL.—A wire or electronic  
24 communication service provider, or officer, em-  
25 ployee, or agent thereof, that receives a request

1 under subsection (a) may disclose information  
2 otherwise subject to any applicable nondisclo-  
3 sure requirement to—

4 “(i) those persons to whom disclosure  
5 is necessary in order to comply with the re-  
6 quest;

7 “(ii) an attorney in order to obtain  
8 legal advice or assistance regarding the re-  
9 quest; or

10 “(iii) other persons as permitted by  
11 the Director of the Federal Bureau of In-  
12 vestigation or the designee of the Director.

13 “(B) PERSONS NECESSARY FOR COMPLI-  
14 ANCE.—Upon a request by the Director of the  
15 Federal Bureau of Investigation or the designee  
16 of the Director, those persons to whom disclo-  
17 sure will be made under subparagraph (A)(i) or  
18 to whom such disclosure was made before the  
19 request shall be identified to the Director or the  
20 designee.

21 “(C) NONDISCLOSURE REQUIREMENT.—A  
22 person to whom disclosure is made under sub-  
23 paragraph (A) shall be subject to the nondisclo-  
24 sure requirements applicable to a person to  
25 whom a request is issued under subsection (a)

1 in the same manner as the person to whom the  
2 request is issued.

3 “(D) NOTICE.—Any recipient that dis-  
4 closes to a person described in subparagraph  
5 (A) information otherwise subject to a non-  
6 disclosure requirement shall inform the person  
7 of the applicable nondisclosure requirement.

8 “(3) RIGHT TO JUDICIAL REVIEW.—

9 “(A) IN GENERAL.—A wire or electronic  
10 communications service provider that receives a  
11 request under subsection (a) shall have the  
12 right to judicial review of any applicable non-  
13 disclosure requirement.

14 “(B) NOTIFICATION.—A request under  
15 subsection (a) shall—

16 “(i) state that if the recipient wishes  
17 to have a court review a nondisclosure re-  
18 quirement, the recipient shall provide no-  
19 tice to the Government in accordance with  
20 section 3511(b)(1)(A); and

21 “(ii) describe the procedures for pro-  
22 viding such notice.

23 “(C) INITIATION OF PROCEEDINGS.—If a  
24 recipient of a request under subsection (a)  
25 makes a notification under subparagraph (B),

1 the Government shall initiate judicial review  
2 under the procedures established in section  
3 3511 of this title, unless an appropriate official  
4 of the Federal Bureau of the Investigation  
5 makes a notification under paragraph (4).

6 “(4) TERMINATION.—In the case of any request  
7 for which a recipient has submitted a notification  
8 under paragraph (3)(B), if the facts supporting a  
9 nondisclosure requirement cease to exist, an appro-  
10 priate official of the Federal Bureau of Investigation  
11 shall promptly notify the wire or electronic service  
12 provider, or officer, employee, or agent thereof, sub-  
13 ject to the nondisclosure requirement that the non-  
14 disclosure requirement is no longer in effect.”.

15 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND  
16 CREDIT REPORTS.—Section 626 of the Fair Credit Re-  
17 porting Act (15 U.S.C. 1681u) is amended by striking  
18 subsection (d) and inserting the following:

19 “(d) PROHIBITION OF CERTAIN DISCLOSURE.—

20 “(1) PROHIBITION.—

21 “(A) IN GENERAL.—If a certification is  
22 issued under subparagraph (B) and notice of  
23 the right to judicial review under paragraph (3)  
24 is provided, no consumer reporting agency, or  
25 officer, employee, or agent thereof, that receives



1 a request or order under subsection (a), (b), or  
2 (c), shall disclose or specify in any consumer re-  
3 port, that the Federal Bureau of Investigation  
4 has sought or obtained access to information or  
5 records under subsection (a), (b), or (c).

6 “(B) CERTIFICATION.—The requirements  
7 of subparagraph (A) shall apply if the Director  
8 of the Federal Bureau of Investigation, or a  
9 designee of the Director whose rank shall be no  
10 lower than Deputy Assistant Director at Bu-  
11 reau headquarters or a Special Agent in Charge  
12 of a Bureau field office, certifies that, absent a  
13 prohibition of disclosure under this subsection,  
14 there may result—

15 “(i) a danger to the national security  
16 of the United States;

17 “(ii) interference with a criminal,  
18 counterterrorism, or counterintelligence in-  
19 vestigation;

20 “(iii) interference with diplomatic re-  
21 lations; or

22 “(iv) danger to the life or physical  
23 safety of any person.

24 “(2) EXCEPTION.—

1           “(A) IN GENERAL.—A consumer reporting  
2 agency, or officer, employee, or agent thereof,  
3 that receives a request or order under sub-  
4 section (a), (b), or (c) may disclose information  
5 otherwise subject to any applicable nondisclo-  
6 sure requirement to—

7           “(i) those persons to whom disclosure  
8 is necessary in order to comply with the re-  
9 quest or order;

10          “(ii) an attorney in order to obtain  
11 legal advice or assistance regarding the re-  
12 quest or order; or

13          “(iii) other persons as permitted by  
14 the Director of the Federal Bureau of In-  
15 vestigation or the designee of the Director.

16          “(B) PERSONS NECESSARY FOR COMPLI-  
17 ANCE.—Upon a request by the Director of the  
18 Federal Bureau of Investigation or the designee  
19 of the Director, those persons to whom disclo-  
20 sure will be made under subparagraph (A)(i) or  
21 to whom such disclosure was made before the  
22 request shall be identified to the Director or the  
23 designee.

24          “(C) NONDISCLOSURE REQUIREMENT.—A  
25 person to whom disclosure is made under sub-

1 paragraph (A) shall be subject to the nondisclo-  
2 sure requirements applicable to a person to  
3 whom a request or order is issued under sub-  
4 section (a), (b), or (c) in the same manner as  
5 the person to whom the request or order is  
6 issued.

7 “(D) NOTICE.—Any recipient that dis-  
8 closes to a person described in subparagraph  
9 (A) information otherwise subject to a non-  
10 disclosure requirement shall inform the person  
11 of the applicable nondisclosure requirement.

12 “(3) RIGHT TO JUDICIAL REVIEW.—

13 “(A) IN GENERAL.—A consumer reporting  
14 agency that receives a request or order under  
15 subsection (a), (b), or (c) shall have the right  
16 to judicial review of any applicable nondisclo-  
17 sure requirement.

18 “(B) NOTIFICATION.—A request under  
19 subsection (a), (b), or (c) shall—

20 “(i) state that if the recipient wishes  
21 to have a court review a nondisclosure re-  
22 quirement, the recipient shall provide no-  
23 tice to the Government in accordance with  
24 section 3511(b)(1)(A) of title 18, United  
25 States Code; and

1                   “(ii) describe the procedures for pro-  
2                   viding such notice.

3                   “(C) INITIATION OF PROCEEDINGS.—If a  
4                   recipient of a request or order under subsection  
5                   (a), (b), or (c) makes a notification under sub-  
6                   paragraph (B), the Government shall initiate  
7                   judicial review under the procedures established  
8                   in section 3511 of title 18, United States Code,  
9                   unless an appropriate official of the Federal  
10                  Bureau of Investigation makes a notification  
11                  under paragraph (4).

12                  “(4) TERMINATION.—In the case of any request  
13                  or order for which a consumer reporting agency has  
14                  submitted a notification under paragraph (3)(B), if  
15                  the facts supporting a nondisclosure requirement  
16                  cease to exist, an appropriate official of the Federal  
17                  Bureau of Investigation shall promptly notify the  
18                  consumer reporting agency, or officer, employee, or  
19                  agent thereof, subject to the nondisclosure require-  
20                  ment that the nondisclosure requirement is no longer  
21                  in effect.”.

22                  (c) DISCLOSURES TO GOVERNMENTAL AGENCIES  
23                  FOR COUNTERTERRORISM PURPOSES.—Section 627 of the  
24                  Fair Credit Reporting Act (15 U.S.C. 1681v) is amended  
25                  by striking subsection (c) and inserting the following:

1 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

2 “(1) PROHIBITION.—

3 “(A) IN GENERAL.—If a certification is  
4 issued under subparagraph (B) and notice of  
5 the right to judicial review under paragraph (3)  
6 is provided, no consumer reporting agency, or  
7 officer, employee, or agent thereof, that receives  
8 a request under subsection (a), shall disclose to  
9 any person or specify in any consumer report,  
10 that a government agency has sought or ob-  
11 tained access to information under subsection  
12 (a).

13 “(B) CERTIFICATION.—The requirements  
14 of subparagraph (A) shall apply if the head of  
15 a government agency authorized to conduct in-  
16 vestigations of, or intelligence or counterintel-  
17 ligence activities or analysis related to, inter-  
18 national terrorism, or a designee, certifies that,  
19 absent a prohibition of disclosure under this  
20 subsection, there may result—

21 “(i) a danger to the national security  
22 of the United States;

23 “(ii) interference with a criminal,  
24 counterterrorism, or counterintelligence in-  
25 vestigation;

1                   “(iii) interference with diplomatic re-  
2                   lations; or

3                   “(iv) danger to the life or physical  
4                   safety of any person.

5                   “(2) EXCEPTION.—

6                   “(A) IN GENERAL.—A consumer reporting  
7                   agency, or officer, employee, or agent thereof,  
8                   that receives a request under subsection (a)  
9                   may disclose information otherwise subject to  
10                  any applicable nondisclosure requirement to—

11                  “(i) those persons to whom disclosure  
12                  is necessary in order to comply with the re-  
13                  quest;

14                  “(ii) an attorney in order to obtain  
15                  legal advice or assistance regarding the re-  
16                  quest; or

17                  “(iii) other persons as permitted by  
18                  the head of the government agency author-  
19                  ized to conduct investigations of, or intel-  
20                  ligence or counterintelligence activities or  
21                  analysis related to, international terrorism,  
22                  or a designee.

23                  “(B) PERSONS NECESSARY FOR COMPLI-  
24                  ANCE.—Upon a request by the head of a gov-  
25                  ernment agency authorized to conduct inves-

1           tigations of, or intelligence or counterintel-  
2           ligence activities or analysis related to, inter-  
3           national terrorism, or a designee, those persons  
4           to whom disclosure will be made under subpara-  
5           graph (A)(i) or to whom such disclosure was  
6           made before the request shall be identified to  
7           the head of the government agency or the des-  
8           ignee.

9           “(C) NONDISCLOSURE REQUIREMENT.—A  
10          person to whom disclosure is made under sub-  
11          paragraph (A) shall be subject to the nondisclo-  
12          sure requirements applicable to a person to  
13          whom a request is issued under subsection (a)  
14          in the same manner as the person to whom the  
15          request is issued.

16          “(D) NOTICE.—Any recipient that dis-  
17          closes to a person described in subparagraph  
18          (A) information otherwise subject to a non-  
19          disclosure requirement shall inform the person  
20          of the applicable nondisclosure requirement.

21          “(3) RIGHT TO JUDICIAL REVIEW.—

22          “(A) IN GENERAL.—A consumer reporting  
23          agency that receives a request under subsection  
24          (a) shall have the right to judicial review of any  
25          applicable nondisclosure requirement.

1           “(B) NOTIFICATION.—A request under  
2 subsection (a) shall—

3           “(i) state that if the recipient wishes  
4 to have a court review a nondisclosure re-  
5 quirement, the recipient shall provide no-  
6 tice to the Government in accordance with  
7 section 3511(b)(1)(A) of title 18, United  
8 States Code; and

9           “(ii) describe the procedures for pro-  
10 viding such notice.

11           “(C) INITIATION OF PROCEEDINGS.—If a  
12 recipient of a request under subsection (a)  
13 makes a notification under subparagraph (B),  
14 the government shall initiate judicial review  
15 under the procedures established in section  
16 3511 of title 18, United States Code, unless an  
17 appropriate official of the government agency  
18 authorized to conduct investigations of, or intel-  
19 ligence or counterintelligence activities or anal-  
20 ysis related to, international terrorism makes a  
21 notification under paragraph (4).

22           “(4) TERMINATION.—In the case of any request  
23 for which a consumer reporting agency has sub-  
24 mitted a notification under paragraph (3)(B), if the  
25 facts supporting a nondisclosure requirement cease



1 to exist, an appropriate official of the government  
2 agency authorized to conduct investigations of, or in-  
3 telligence or counterintelligence activities or analysis  
4 related to, international terrorism shall promptly no-  
5 tify the consumer reporting agency, or officer, em-  
6 ployee, or agent thereof, subject to the nondisclosure  
7 requirement that the nondisclosure requirement is  
8 no longer in effect.”.

9 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the  
10 Right to Financial Privacy Act of 1978 (12 U.S.C.  
11 3414(a)(5)) is amended by striking subparagraph (D) and  
12 inserting the following:

13 “(D) PROHIBITION OF CERTAIN DISCLOSURE.—

14 “(i) PROHIBITION.—

15 “(I) IN GENERAL.—If a certification is  
16 issued under subclause (II) and notice of the  
17 right to judicial review under clause (iii) is pro-  
18 vided, no financial institution, or officer, em-  
19 ployee, or agent thereof, that receives a request  
20 under subparagraph (A), shall disclose to any  
21 person that the Federal Bureau of Investigation  
22 has sought or obtained access to information or  
23 records under subparagraph (A).

24 “(II) CERTIFICATION.—The requirements  
25 of subclause (I) shall apply if the Director of

1 the Federal Bureau of Investigation, or a des-  
2 ignee of the Director whose rank shall be no  
3 lower than Deputy Assistant Director at Bu-  
4 reau headquarters or a Special Agent in Charge  
5 of a Bureau field office, certifies that, absent a  
6 prohibition of disclosure under this subpara-  
7 graph, there may result—

8 “(aa) a danger to the national secu-  
9 rity of the United States;

10 “(bb) interference with a criminal,  
11 counterterrorism, or counterintelligence in-  
12 vestigation;

13 “(cc) interference with diplomatic re-  
14 lations; or

15 “(dd) danger to the life or physical  
16 safety of any person.

17 “(ii) EXCEPTION.—

18 “(I) IN GENERAL.—A financial institution,  
19 or officer, employee, or agent thereof, that re-  
20 ceives a request under subparagraph (A) may  
21 disclose information otherwise subject to any  
22 applicable nondisclosure requirement to—

23 “(aa) those persons to whom disclo-  
24 sure is necessary in order to comply with  
25 the request;

1           “(bb) an attorney in order to obtain  
2           legal advice or assistance regarding the re-  
3           quest; or

4           “(cc) other persons as permitted by  
5           the Director of the Federal Bureau of In-  
6           vestigation or the designee of the Director.

7           “(II) PERSONS NECESSARY FOR COMPLI-  
8           ANCE.—Upon a request by the Director of the  
9           Federal Bureau of Investigation or the designee  
10          of the Director, those persons to whom disclo-  
11          sure will be made under subclause (I)(aa) or to  
12          whom such disclosure was made before the re-  
13          quest shall be identified to the Director or the  
14          designee.

15          “(III) NONDISCLOSURE REQUIREMENT.—  
16          A person to whom disclosure is made under  
17          subclause (I) shall be subject to the nondisclo-  
18          sure requirements applicable to a person to  
19          whom a request is issued under subparagraph  
20          (A) in the same manner as the person to whom  
21          the request is issued.

22          “(IV) NOTICE.—Any recipient that dis-  
23          closes to a person described in subclause (I) in-  
24          formation otherwise subject to a nondisclosure

1 requirement shall inform the person of the ap-  
2 plicable nondisclosure requirement.

3 “(iii) RIGHT TO JUDICIAL REVIEW.—

4 “(I) IN GENERAL.—A financial institution  
5 that receives a request under subparagraph (A)  
6 shall have the right to judicial review of any ap-  
7 plicable nondisclosure requirement.

8 “(II) NOTIFICATION.—A request under  
9 subparagraph (A) shall—

10 “(aa) state that if the recipient wishes  
11 to have a court review a nondisclosure re-  
12 quirement, the recipient shall provide no-  
13 tice to the Government in accordance with  
14 section 3511(b)(1)(A) of title 18, United  
15 States Code; and

16 “(bb) describe the procedures for pro-  
17 viding such notice.

18 “(III) INITIATION OF PROCEEDINGS.—If a  
19 recipient of a request under subparagraph (A)  
20 makes a notification under subclause (II), the  
21 Government shall initiate judicial review under  
22 the procedures established in section 3511 of  
23 title 18, United States Code, unless an appro-  
24 priate official of the Federal Bureau of Inves-  
25 tigation makes a notification under clause (iv).

1           “(iv) TERMINATION.—In the case of any re-  
2           quest for which a financial institution has submitted  
3           a notification under clause (iii)(II), if the facts sup-  
4           porting a nondisclosure requirement cease to exist,  
5           an appropriate official of the Federal Bureau of In-  
6           vestigation shall promptly notify the financial insti-  
7           tution, or officer, employee, or agent thereof, subject  
8           to the nondisclosure requirement that the nondisclo-  
9           sure requirement is no longer in effect.”.

10          (e) REQUESTS BY AUTHORIZED INVESTIGATIVE  
11 AGENCIES.—Section 802 of the National Security Act of  
12 1947 (50 U.S.C. 436), is amended by striking subsection  
13 (b) and inserting the following:

14          “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

15                 “(1) PROHIBITION.—

16                         “(A) IN GENERAL.—If a certification is  
17                         issued under subparagraph (B) and notice of  
18                         the right to judicial review under paragraph (3)  
19                         is provided, no governmental or private entity,  
20                         or officer, employee, or agent thereof, that re-  
21                         ceives a request under subsection (a), shall dis-  
22                         close to any person that an authorized inves-  
23                         tigative agency described in subsection (a) has  
24                         sought or obtained access to information under  
25                         subsection (a).

1           “(B) CERTIFICATION.—The requirements  
2 of subparagraph (A) shall apply if the head of  
3 an authorized investigative agency described in  
4 subsection (a), or a designee, certifies that, ab-  
5 sent a prohibition of disclosure under this sub-  
6 section, there may result—

7                   “(i) a danger to the national security  
8 of the United States;

9                   “(ii) interference with a criminal,  
10 counterterrorism, or counterintelligence in-  
11 vestigation;

12                   “(iii) interference with diplomatic re-  
13 lations; or

14                   “(iv) danger to the life or physical  
15 safety of any person.

16           “(2) EXCEPTION.—

17                   “(A) IN GENERAL.—A governmental or  
18 private entity, or officer, employee, or agent  
19 thereof, that receives a request under sub-  
20 section (a) may disclose information otherwise  
21 subject to any applicable nondisclosure require-  
22 ment to—

23                   “(i) those persons to whom disclosure  
24 is necessary in order to comply with the re-  
25 quest;

1           “(ii) an attorney in order to obtain  
2           legal advice or assistance regarding the re-  
3           quest; or

4           “(iii) other persons as permitted by  
5           the head of the authorized investigative  
6           agency described in subsection (a).

7           “(B) PERSONS NECESSARY FOR COMPLI-  
8           ANCE.—Upon a request by the head of an au-  
9           thorized investigative agency described in sub-  
10          section (a), or a designee, those persons to  
11          whom disclosure will be made under subpara-  
12          graph (A)(i) or to whom such disclosure was  
13          made before the request shall be identified to  
14          the head of the authorized investigative agency  
15          or the designee.

16          “(C) NONDISCLOSURE REQUIREMENT.—A  
17          person to whom disclosure is made under sub-  
18          paragraph (A) shall be subject to the nondisclo-  
19          sure requirements applicable to a person to  
20          whom a request is issued under subsection (a)  
21          in the same manner as the person to whom the  
22          request is issued.

23          “(D) NOTICE.—Any recipient that dis-  
24          closes to a person described in subparagraph  
25          (A) information otherwise subject to a non-

1 disclosure requirement shall inform the person  
2 of the applicable nondisclosure requirement.

3 “(3) RIGHT TO JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—A governmental or  
5 private entity that receives a request under sub-  
6 section (a) shall have the right to judicial re-  
7 view of any applicable nondisclosure require-  
8 ment.

9 “(B) NOTIFICATION.—A request under  
10 subsection (a) shall—

11 “(i) state that if the recipient wishes  
12 to have a court review a nondisclosure re-  
13 quirement, the recipient shall provide no-  
14 tice to the Government in accordance with  
15 section 3511(b)(1)(A) of title 18, United  
16 States Code; and

17 “(ii) describe the procedures for pro-  
18 viding such notice.

19 “(C) INITIATION OF PROCEEDINGS.—If a  
20 recipient of a request under subsection (a)  
21 makes a notification under subparagraph (B),  
22 the Government shall initiate judicial review  
23 under the procedures established in section  
24 3511 of title 18, United States Code, unless an  
25 appropriate official of the authorized investiga-



1           tive agency described in subsection (a) makes a  
2           notification under paragraph (4).

3           “(4) TERMINATION.—In the case of any request  
4           for which a governmental or private entity has sub-  
5           mitted a notification under paragraph (3)(B), if the  
6           facts supporting a nondisclosure requirement cease  
7           to exist, an appropriate official of the authorized in-  
8           vestigative agency described in subsection (a) shall  
9           promptly notify the governmental or private entity,  
10          or officer, employee, or agent thereof, subject to the  
11          nondisclosure requirement that the nondisclosure re-  
12          quirement is no longer in effect.”.

13 **SEC. 6. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL**  
14 **AND TRANSACTIONAL RECORDS.**

15          (a) IN GENERAL.—Section 2709 of title 18, United  
16 States Code, as amended by this Act, is amended—

17           (1) by redesignating subsections (c), (d), (e),  
18           and (f) as subsections (d), (e), (f), and (g), respec-  
19           tively; and

20           (2) by inserting after subsection (b) the fol-  
21           lowing:

22          “(c) WRITTEN STATEMENT.—The Director of the  
23 Federal Bureau of Investigation, or a designee in a posi-  
24 tion not lower than Deputy Assistant Director at Bureau  
25 headquarters or a Special Agent in Charge in a Bureau

1 field office designated by the Director, may make a certifi-  
2 cation under subsection (b) only upon a written statement,  
3 which shall be retained by the Federal Bureau of Inves-  
4 tigation, of specific facts showing that there are reason-  
5 able grounds to believe that the information sought is rel-  
6 evant to the authorized investigation described in sub-  
7 section (b).”.

8 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND  
9 CREDIT REPORTS.—Section 626 of the Fair Credit Re-  
10 porting Act (15 U.S.C. 1681u), as amended by this Act,  
11 is amended—

12 (1) by redesignating subsections (d) through  
13 (m) as subsections (e) through (n), respectively; and

14 (2) by inserting after subsection (c) the fol-  
15 lowing:

16 “(d) WRITTEN STATEMENT.—The Director of the  
17 Federal Bureau of Investigation, or a designee in a posi-  
18 tion not lower than Deputy Assistant Director at Bureau  
19 headquarters or a Special Agent in Charge in a Bureau  
20 field office designated by the Director, may make a certifi-  
21 cation under subsection (a) or (b) only upon a written  
22 statement, which shall be retained by the Federal Bureau  
23 of Investigation, of specific facts showing that there are  
24 reasonable grounds to believe that the information sought

1 is relevant to the authorized investigation described in  
2 subsection (a) or (b), as the case may be.”.

3 (c) DISCLOSURES TO GOVERNMENTAL AGENCIES  
4 FOR COUNTERTERRORISM PURPOSES.—Section 627(b) of  
5 the Fair Credit Reporting Act (15 U.S.C. 1681v(b)) is  
6 amended—

7 (1) in the subsection heading, by striking  
8 “FORM OF CERTIFICATION” and inserting “CER-  
9 TIFICATION”;

10 (2) by striking “The certification” and inserting  
11 the following:

12 “(1) FORM OF CERTIFICATION.—The certifi-  
13 cation”; and

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

15 “(2) WRITTEN STATEMENT.—A supervisory of-  
16 ficial or officer described in paragraph (1) may  
17 make a certification under subsection (a) only upon  
18 a written statement, which shall be retained by the  
19 government agency, of specific facts showing that  
20 there are reasonable grounds to believe that the in-  
21 formation sought is relevant to the authorized inves-  
22 tigation described in subsection (a).”.

23 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the  
24 Right to Financial Privacy Act of 1978 (12 U.S.C.  
25 3414(a)(5)), as amended by this Act, is amended—

1           (1) by redesignating subparagraphs (B), (C),  
2           and (D) as subparagraphs (C), (D), and (E), respec-  
3           tively; and

4           (2) by inserting after subparagraph (A) the fol-  
5           lowing:

6           “(B) The Director of the Federal Bureau of Inves-  
7           tigation, or a designee in a position not lower than Deputy  
8           Assistant Director at Bureau headquarters or a Special  
9           Agent in Charge in a Bureau field office designated by  
10          the Director, may make a certification under subpara-  
11          graph (A) only upon a written statement, which shall be  
12          retained by the Federal Bureau of Investigation, of spe-  
13          cific facts showing that there are reasonable grounds to  
14          believe that the information sought is relevant to the au-  
15          thorized investigation described in subparagraph (A).”.

16          (e) REQUESTS BY AUTHORIZED INVESTIGATIVE  
17          AGENCIES.—Section 802(a) of the National Security Act  
18          of 1947 (50 U.S.C. 436(a)) is amended by adding at the  
19          end the following:

20          “(4) A department or agency head, deputy depart-  
21          ment or agency head, or senior official described in para-  
22          graph (3)(A) may make a certification under paragraph  
23          (3)(A) only upon a written statement, which shall be re-  
24          tained by the authorized investigative agency, of specific  
25          facts showing that there are reasonable grounds to believe

1 that the information sought is relevant to the authorized  
2 inquiry or investigation described in paragraph  
3 (3)(A)(ii).”.

4 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) OBSTRUCTION OF CRIMINAL INVESTIGA-  
6 TIONS.—Section 1510(e) of title 18, United States  
7 Code, is amended by striking “section 2709(c)(1) of  
8 this title, section 626(d)(1) or 627(c)(1) of the Fair  
9 Credit Reporting Act (15 U.S.C. 1681u(d)(1) or  
10 1681v(e)(1)), section 1114(a)(3)(A) or  
11 1114(a)(5)(D)(i) of the Right to Financial Privacy  
12 Act (12 U.S.C. 3414(a)(3)(A) or  
13 3414(a)(5)(D)(i)),” and inserting “section  
14 2709(d)(1) of this title, section 626(e)(1) or  
15 627(c)(1) of the Fair Credit Reporting Act (15  
16 U.S.C. 1681u(e)(1) and 1681v(c)(1)), section  
17 1114(a)(3)(A) or 1114(a)(5)(E)(i) of the Right to  
18 Financial Privacy Act of 1978 (12 U.S.C.  
19 3414(a)(3)(A) and 3414(a)(5)(E)(i)),”.

20 (2) SEMIANNUAL REPORTS.—Section 507(b) of  
21 the National Security Act of 1947 (50 U.S.C.  
22 415b(b)) is amended—

23 (A) in paragraph (4), by striking “section  
24 624(h)(2) of the Fair Credit Reporting Act (15  
25 U.S.C. 1681u(h)(2))” and inserting “section

1           626(i)(2) of the Fair Credit Reporting Act (15  
2           U.S.C. 1681u(i)(2))”; and

3           (B) in paragraph (5), by striking “section  
4           1114(a)(5)(C) of the Right to Financial Privacy  
5           Act of 1978 (12 U.S.C. 3414(a)(5)(C))” and  
6           inserting “section 1114(a)(5)(D) of the Right  
7           to Financial Privacy Act of 1978 (12 U.S.C.  
8           3414(a)(5)(D))”.

9   **SEC. 7. ADDITIONAL RULES RELATING TO NATIONAL SECUR-**  
10                           **RITY LETTERS.**

11           (a) AUDIT OF USE OF NATIONAL SECURITY LET-  
12   TERS.—Section 119 of the USA PATRIOT Improvement  
13   and Reauthorization Act of 2005 is amended—

14           (1) in subsection (b)(1), by striking “2003  
15           through 2006” and inserting “2007 through 2013”;

16           (2) in subsection (b)(3)(E), by striking “fol-  
17           lowing the date of the enactment of this Act” and  
18           inserting “after 2006”;

19           (3) in subsection (c)(1)—

20           (A) by striking “Not later than one year  
21           after the date of the enactment of this Act, or  
22           upon completion of the audit under this section  
23           for calendar years 2003 and 2004, whichever is  
24           earlier” and inserting “Not later than Decem-  
25           ber 31, 2010”; and

1 (B) by striking “conducted under this sub-  
2 section for calendar years 2003 and 2004” and  
3 inserting “conducted under this section for cal-  
4 endar years 2007 through 2009”;

5 (4) in subsection (c)(2)—

6 (A) by striking “2005” each place it ap-  
7 pears (including in the subsection heading) and  
8 inserting “2010”;

9 (B) by striking “2006” each place it ap-  
10 pears (including in the subsection heading) and  
11 inserting “2011”; and

12 (C) by striking “2007” and inserting  
13 “2012”; and

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

16 “(3) CALENDAR YEARS 2012 AND 2013.—Not  
17 later than December 31, 2014, or upon completion  
18 of the audit under this subsection for calendar years  
19 2012 and 2013, whichever is earlier, the Inspector  
20 General of the Department of Justice shall submit  
21 to the Committee on the Judiciary and the Perma-  
22 nent Select Committee on Intelligence of the House  
23 of Representatives and the Committee on the Judici-  
24 ary and the Select Committee on Intelligence of the  
25 Senate a report containing the results of the audit

1 conducted under the subsection for calendar years  
2 2012 and 2013.”.

3 (b) PROCEDURES REGARDING INFORMATION OB-  
4 TAINED THROUGH NATIONAL SECURITY LETTERS.—

5 (1) IN GENERAL.—Not later than 90 days after  
6 the date of the enactment of this Act, the Attorney  
7 General shall—

8 (A) establish procedures for the collection,  
9 use, and storage of information obtained in re-  
10 sponse to a national security letter; and

11 (B) submit to the appropriate congres-  
12 sional committees the procedures established  
13 under subparagraph (A).

14 (2) REVISIONS TO PROCEDURES.—The Attor-  
15 ney General shall notify the appropriate congres-  
16 sional committees of any significant changes to the  
17 procedures established under paragraph (1)(A).

18 (3) DEFINITIONS.—In this subsection:

19 (A) APPROPRIATE CONGRESSIONAL COM-  
20 MITTEES.—The term “appropriate congres-  
21 sional committees” means—

22 (i) the Permanent Select Committee  
23 on Intelligence and the Committee on the  
24 Judiciary of the House of Representatives;  
25 and



1 (ii) the Select Committee on Intel-  
2 ligence and the Committee on the Judici-  
3 ary of the Senate.

4 (B) NATIONAL SECURITY LETTER.—the  
5 term “national security letter” means a request  
6 for information issued under section 2709 of  
7 title 18, United States Code, section 1114(a)(5)  
8 of the Right to Financial Privacy Act of 1978  
9 (12 U.S.C. 3414(5)), subsection (a) or (b) of  
10 section 626 of the Fair Credit Reporting Act  
11 (15 U.S.C. 1681u), or section 627 of the Fair  
12 Credit Reporting Act (15 U.S.C. 1681v).

13 **SEC. 8. LONE WOLF TERRORISTS AS AGENTS OF FOREIGN**  
14 **POWERS.**

15 Section 104 of the Foreign Intelligence Surveillance  
16 Act of 1978 (50 U.S.C. 1804) is amended by adding at  
17 the end the following new subsection:

18 “(e) REQUIREMENTS FOR APPLICATIONS FOR INDI-  
19 VIDUAL TERRORISTS.—

20 “(1) DELEGATION.—The Attorney General may  
21 only delegate the authority to approve an application  
22 under subsection (a) for an order approving elec-  
23 tronic surveillance of an agent of a foreign power, as  
24 defined in section 101(b)(1)(C), to the Deputy At-

1       torney General or the Assistant Attorney General for  
2       National Security.

3               “(2) NOTICE TO CONGRESS.—Not later than  
4       seven days after an application for an order approv-  
5       ing electronic surveillance of an agent of a foreign  
6       power, as defined in section 101(b)(1)(C), is made  
7       under subsection (a), the Attorney General shall  
8       submit to the Permanent Select Committee on Intel-  
9       ligence and the Committee on the Judiciary of the  
10      House of Representatives and the Select Committee  
11      on Intelligence and the Committee on the Judiciary  
12      of the Senate notice of such application.”.

13 **SEC. 9. ORDERS FOR PEN REGISTERS AND TRAP AND**  
14               **TRACE DEVICES FOR FOREIGN INTEL-**  
15               **LIGENCE PURPOSES.**

16       (a) APPLICATION.—Section 402(c) of the Foreign In-  
17      telligence Surveillance Act of 1978 (50 U.S.C. 1842(c))  
18      is amended—

19               (1) in paragraph (1), by striking “and” at the  
20      end;

21               (2) in paragraph (2)—

22                       (A) by striking “a certification by the ap-  
23                       plicant” and inserting “a statement of the facts  
24                       and circumstances relied upon by the applicant  
25                       to justify the belief of the applicant”; and

1 (B) by striking the period at the end and  
2 inserting “; and”; and

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

4 “(3) a statement of whether minimization pro-  
5 cedures are being proposed and, if so, a statement  
6 of the proposed minimization procedures.”.

7 (b) MINIMIZATION.—

8 (1) DEFINITION.—Section 401 of the Foreign  
9 Intelligence Surveillance Act of 1978 (50 U.S.C.  
10 1841) is amended by adding at the end the fol-  
11 lowing:

12 “(4) The term ‘minimization procedures’  
13 means—

14 “(A) specific procedures, that are reason-  
15 ably designed in light of the purpose and tech-  
16 nique of an order for the installation and use  
17 of a pen register or trap and trace device, to  
18 minimize the retention, and prohibit the dis-  
19 semination, of nonpublicly available information  
20 known to concern unconsenting United States  
21 persons consistent with the need of the United  
22 States to obtain, produce, and disseminate for-  
23 eign intelligence information;

24 “(B) procedures that require that nonpub-  
25 licly available information, which is not foreign

1 intelligence information, as defined in section  
2 101(e)(1), shall not be disseminated in a man-  
3 ner that identifies any United States person,  
4 without such person’s consent, unless such per-  
5 son’s identity is necessary to understand foreign  
6 intelligence information or assess its impor-  
7 tance; and

8 “(C) notwithstanding subparagraphs (A)  
9 and (B), procedures that allow for the retention  
10 and dissemination of information that is evi-  
11 dence of a crime which has been, is being, or  
12 is about to be committed and that is to be re-  
13 tained or disseminated for law enforcement pur-  
14 poses.”.

15 (2) PEN REGISTERS AND TRAP AND TRACE DE-  
16 VICES.—Section 402 of the Foreign Intelligence Sur-  
17 veillance Act of 1978 (50 U.S.C. 1842) is amend-  
18 ed—

19 (A) in subsection (d)—

20 (i) in paragraph (1), by inserting “,  
21 and if, in exceptional circumstances, mini-  
22 mization procedures are ordered, that the  
23 proposed minimization procedures meet the  
24 definition of minimization procedures

1 under this title” before the period at the  
2 end; and

3 (ii) in paragraph (2)(B)—

4 (I) in clause (ii)(II), by striking  
5 “and” after the semicolon; and

6 (II) by adding at the end the fol-  
7 lowing:

8 “(iv) if applicable, the minimization  
9 procedures be followed; and”; and

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

11 “(h) At or before the end of the period of time for  
12 which the installation and use of a pen register or trap  
13 and trace device is approved under an order or an exten-  
14 sion under this section, the judge may assess compliance  
15 with any applicable minimization procedures by reviewing  
16 the circumstances under which information concerning  
17 United States persons was retained or disseminated.”.

18 (3) EMERGENCIES.—Section 403 of the For-  
19 eign Intelligence Surveillance Act of 1978 (50  
20 U.S.C. 1843) is amended—

21 (A) by redesignating subsection (c) as sub-  
22 section (d); and

23 (B) by inserting after subsection (b) the  
24 following:

1       “(c) If the Attorney General authorizes the emer-  
2 gency installation and use of a pen register or trap and  
3 trace device under this section, the Attorney General shall  
4 require that minimization procedures be followed, if appro-  
5 priate.”.

6           (4) USE OF INFORMATION.—Section 405(a)(1)  
7 of the Foreign Intelligence Surveillance Act of 1978  
8 (50 U.S.C. 1845(a)(1)) is amended by inserting “or  
9 minimization procedures required under this title, if  
10 ordered or determined appropriate by the Attorney  
11 General under section 403(c)” after “provisions of  
12 this section”.

13       (c) AUDITS.—

14           (1) IN GENERAL.—The Inspector General of  
15 the Department of Justice shall perform comprehen-  
16 sive audits of the effectiveness and use, including  
17 any improper or illegal use, of pen registers and trap  
18 and trace devices under title IV of the Foreign Intel-  
19 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et  
20 seq.) during the period beginning on January 1,  
21 2007, and ending on December 31, 2013.

22           (2) REQUIREMENTS.—The audits required  
23 under paragraph (1) shall include—

24           (A) an examination of the use of pen reg-  
25 isters and trap and trace devices under title IV

1 of the Foreign Intelligence Surveillance Act of  
2 1978 for calendar years 2007 through 2013;

3 (B) an examination of the installation and  
4 use of a pen register or trap and trace device  
5 on emergency bases under section 403 of the  
6 Foreign Intelligence Surveillance Act of 1978  
7 (50 U.S.C. 1843);

8 (C) any noteworthy facts or circumstances  
9 relating to the use of a pen register or trap and  
10 trace device under title IV of the Foreign Intel-  
11 ligence Surveillance Act of 1978, including any  
12 improper or illegal use of the authority provided  
13 under that title; and

14 (D) an examination of the effectiveness of  
15 the authority under title IV of the Foreign In-  
16 telligence Surveillance Act of 1978 as an inves-  
17 tigative tool, including—

18 (i) the importance of the information  
19 acquired to the intelligence activities of the  
20 Federal Bureau of Investigation or any  
21 other department or agency of the Federal  
22 Government;

23 (ii) the manner in which the informa-  
24 tion is collected, retained, analyzed, and  
25 disseminated by the Federal Bureau of In-

1            investigation, including any direct access to  
2            the information provided to any other de-  
3            partment, agency, or instrumentality of  
4            Federal, State, local, or tribal governments  
5            or any private sector entity;

6            (iii) with respect to calendar years  
7            2010 through 2013, an examination of the  
8            minimization procedures used in relation to  
9            pen registers and trap and trace devices  
10           under title IV of the Foreign Intelligence  
11           Surveillance Act of 1978 and whether the  
12           minimization procedures protect the con-  
13           stitutional rights of United States persons  
14           (as defined in section 101 of the Foreign  
15           Intelligence Surveillance Act of 1978 (50  
16           U.S.C. 1801));

17           (iv) whether, and how often, the Fed-  
18           eral Bureau of Investigation used informa-  
19           tion acquired under a pen register or trap  
20           and trace device under title IV of the For-  
21           eign Intelligence Surveillance Act of 1978  
22           to produce an analytical intelligence prod-  
23           uct for distribution within the Federal Bu-  
24           reau of Investigation, to the intelligence  
25           community (as defined in section 3(4) of



1 the National Security Act of 1947 (50  
2 U.S.C. 401a(4))), or to other Federal,  
3 State, local, or tribal government depart-  
4 ments, agencies, or instrumentalities; and

5 (v) whether, and how often, the Fed-  
6 eral Bureau of Investigation provided in-  
7 formation acquired under a pen register or  
8 trap and trace device under title IV of the  
9 Foreign Intelligence Surveillance Act of  
10 1978 to law enforcement authorities for  
11 use in criminal proceedings.

12 (3) SUBMISSION DATES.—

13 (A) PRIOR YEARS.—Not later than Decem-  
14 ber 31, 2010, the Inspector General of the De-  
15 partment of Justice shall submit to the Com-  
16 mittee on the Judiciary and the Select Com-  
17 mittee on Intelligence of the Senate and the  
18 Committee on the Judiciary and the Permanent  
19 Select Committee on Intelligence of the House  
20 of Representatives a report containing the re-  
21 sults of the audit conducted under this section  
22 for calendar years 2007 through 2009.

23 (B) CALENDAR YEARS 2010 AND 2011.—  
24 Not later than December 31, 2012, the Inspec-  
25 tor General of the Department of Justice shall

1 submit to the Committee on the Judiciary and  
2 the Select Committee on Intelligence of the  
3 Senate and the Committee on the Judiciary and  
4 the Permanent Select Committee on Intelligence  
5 of the House of Representatives a report con-  
6 taining the results of the audit conducted under  
7 this section for calendar years 2010 and 2011.

8 (C) CALENDAR YEARS 2012 AND 2013.—Not  
9 later than December 31, 2014, the Inspector  
10 General of the Department of Justice shall sub-  
11 mit to the Committee on the Judiciary and the  
12 Select Committee on Intelligence of the Senate  
13 and the Committee on the Judiciary and the  
14 Permanent Select Committee on Intelligence of  
15 the House of Representatives a report con-  
16 taining the results of the audit conducted under  
17 this section for calendar years 2010 and 2011.

18 (4) PRIOR NOTICE TO ATTORNEY GENERAL AND  
19 DIRECTOR OF NATIONAL INTELLIGENCE; COM-  
20 MENTS.—

21 (A) NOTICE.—Not less than 30 days be-  
22 fore the submission of a report under subpara-  
23 graph (A), (B), or (C) of paragraph (3), the In-  
24 spector General of the Department of Justice

1 shall provide the report to the Attorney General  
2 and the Director of National Intelligence.

3 (B) COMMENTS.—The Attorney General or  
4 the Director of National Intelligence may pro-  
5 vide such comments to be included in a report  
6 submitted under subparagraph (A), (B), or (C)  
7 of paragraph (3) as the Attorney General or the  
8 Director of National Intelligence may consider  
9 necessary.

10 (5) UNCLASSIFIED FORM.—A report submitted  
11 under subparagraph (A), (B), or (C) of paragraph  
12 (3) and any comments included under paragraph  
13 (4)(B) shall be in unclassified form, but may include  
14 a classified annex.

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