

Calendar No. 574

116TH CONGRESS
2D SESSION**H. R. 4713****[Report No. 116-280]**

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2019

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

OCTOBER 19, 2020

Reported by Mr. JOHNSON, with an amendment

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

AN ACT

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Home-

5 land Security Office of Civil Rights and Civil Liberties Au-

6 ~~thorization Act”.~~

1 **SEC. 2. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

2 (a) **IN GENERAL.**—Section 705 of the Homeland Se-
3 curity Act of 2002 (6 U.S.C. 345) is amended—

4 (1) in the section heading, by striking “**ESTAB-**
5 **LISHMENT OF**”; and

6 (2) by striking subsections (a) and (b) and in-
7 serting the following new subsections:

8 “(a) **IN GENERAL.**—There is established within the
9 Department an Office for Civil Rights and Civil Liberties.
10 The head of such Office is the Officer for Civil Rights
11 and Civil Liberties, who shall report directly to the Sec-
12 retary.

13 “(b) **RESPONSIBILITIES.**—The Officer for Civil
14 Rights and Civil Liberties shall carry out the following re-
15 sponsibilities:

16 “(1) Oversee compliance with constitutional,
17 statutory, regulatory, policy, and other requirements
18 relating to the civil rights and civil liberties of indi-
19 viduals affected by the programs and activities of
20 the Department.

21 “(2) Integrate civil rights and civil liberties pro-
22 tections into all programs and activities of the De-
23 partment.

24 “(3) Conduct civil rights and civil liberties im-
25 pact assessments, as appropriate, including prior to

1 the implementation of new Department regulations,
2 initiatives, programs, or policies.

3 “(4) Conduct periodic reviews of policies, proce-
4 dures, and activities of the Department relating to
5 civil rights and civil liberties.

6 “(5) Provide policy advice, recommendations,
7 and other technical assistance relating to civil rights
8 and civil liberties to the Secretary and to heads of
9 components, directorates, and offices and other per-
10 sonnel within the Department.

11 “(6) Review, assess, and investigate complaints,
12 including complaints filed by members of the public,
13 and information indicating possible abuses of civil
14 rights or civil liberties at the Department, unless the
15 Inspector General of the Department determines
16 that any such complaint should be investigated by
17 the Inspector General.

18 “(7) Initiate reviews, investigations, and assess-
19 ments of the administration of the programs and ac-
20 tivities by the Department relating to civil rights
21 and civil liberties, as the Officer determines nec-
22 essary.

23 “(8) Coordinate with the Privacy Officer to en-
24 sure that—

1 “(A) programs, policies, and procedures in-
2 volving civil rights, civil liberties, and privacy
3 considerations are addressed in an integrated
4 and comprehensive manner; and

5 “(B) Congress receives appropriate reports
6 regarding such programs, policies, and proce-
7 dures.

8 “(9) Lead the equal employment opportunity
9 programs of the Department, including complaint
10 management and adjudication, workforce diversity,
11 and promotion of the merit system principles.

12 “(10) Make publicly available through acces-
13 sible communications channels, including the website
14 of the Department—

15 “(A) information on the responsibilities
16 and functions of, and how to contact, the Of-
17 fice;

18 “(B) summary of reports of investigations
19 that result in final recommendations that are
20 issued by the Officer upon completion of inves-
21 tigations carried out pursuant to paragraph (6);
22 and

23 “(C) summaries of impact assessments
24 issued by the Officer and carried out pursuant
25 to paragraph (3) or (7).

1 “(11) Engage with individuals and communities
2 whose civil rights and civil liberties may be affected
3 by programs and activities of the Department, in-
4 cluding by informing such individuals and commu-
5 nities about report and redress processes and advis-
6 ing the Secretary and heads of components, direc-
7 torates, offices, and other personnel within the De-
8 partment of concerns raised by such individuals and
9 communities.

10 “(c) COORDINATION WITH INSPECTOR GENERAL.—

11 “(1) AUTHORITY TO INVESTIGATE POSSIBLE
12 ABUSES.—The Officer for Civil Rights and Civil Lib-
13 erties may investigate any matter referred to in
14 paragraph (6) or (7) of subsection (b) after fulfilling
15 the coordination requirements under paragraph (2)
16 with respect to such matter.

17 “(2) COORDINATION REQUIREMENTS.—

18 “(A) REFERRAL OF MATTERS TO INSPEC-
19 TOR GENERAL.—Before initiating any investiga-
20 tion described under paragraph (1), the Officer
21 for Civil Rights and Civil Liberties shall refer
22 the matter and all related complaints to the In-
23 spector General of the Department.

24 “(B) INSPECTOR GENERAL RESPONSIBIL-
25 ITIES.—

1 “(i) DETERMINATION AND NOTIFICA-
2 TION.—Not later than 5 business days
3 after the receipt of a matter referred under
4 subparagraph (A), the Inspector General
5 shall—

6 “(I) make a determination re-
7 garding whether the Inspector Gen-
8 eral intends to initiate an audit or in-
9 vestigation of the matter referred
10 under subparagraph (A); and

11 “(II) notify the Officer of such
12 determination.

13 “(ii) AUDITS AND INVESTIGATIONS.—
14 If the Inspector General notifies the Offi-
15 cer for Civil Rights and Civil Liberties that
16 the Inspector General intends to initiate an
17 audit or investigation, the Inspector Gen-
18 eral shall—

19 “(I) initiate such audit or inves-
20 tigate by not later than 90 days after
21 providing such notification; or

22 “(II) not later than 3 days after
23 the end of the 90-day period specified
24 in subclause (I), notify the Officer

1 that such audit or investigation was
2 not initiated.

3 “(C) PROVISION OF ASSISTANCE.—At the
4 request of the Inspector General, the Officer for
5 Civil Rights and Civil Liberties may provide as-
6 sistance to the Inspector General on any inves-
7 tigation or audit initiated by the Inspector Gen-
8 eral based on a referral under subparagraph
9 (A).

10 “(D) INVESTIGATION BY OFFICER.—The
11 Officer for Civil Rights and Civil Liberties may
12 investigate a matter referred to the Inspector
13 General under subparagraph (A) only if—

14 “(i) the Inspector General notifies the
15 Officer for Civil Rights and Civil Liberties
16 that the Inspector General does not intend
17 to initiate an audit or investigation relat-
18 ing to that matter; or

19 “(ii) the Inspector General provides
20 notification under subparagraph (B)(ii)(II)
21 that an audit or investigation was not initi-
22 ated.

23 “(d) TRANSPARENCY.—

24 “(1) COMPLAINTS.—In the case of a complaint
25 made concerning allegations of abuses of civil rights

1 and civil liberties under paragraph (6) of subsection
2 (b), the Officer for Civil Rights and Civil Liberties
3 shall—

4 “(A) provide to the individual who made
5 the complaint notice of the receipt of such com-
6 plaint within 30 days of receiving the com-
7 plaint; and

8 “(B) inform the complainant of the deter-
9 mination of the Officer regarding the initiation
10 of a review, assessment, or investigation within
11 the Office, a referral to the Inspector General
12 of the Department, or any other action taken.

13 “(2) INVESTIGATIONS.—In the case of an inves-
14 tigation initiated by the Officer pursuant to para-
15 graph (6) or (7) of subsection (b), upon the conclu-
16 sion of the investigation, the Officer shall produce a
17 report on the investigation which—

18 “(A) shall include the findings and rec-
19 ommendations of the Officer;

20 “(B) a summary of which shall be made
21 publicly available;

22 “(C) shall not include any personally iden-
23 tifiable information related to any individual in-
24 volved in such investigation; and

1 “(D) may include a classified appendix, as
2 the Officer determines appropriate.

3 ~~“(3) SUBMITTAL TO HEADS OF OPERATIONAL~~
4 ~~COMPONENTS.—~~The Officer shall transmit a copy of
5 each report produced under paragraph (2) to the
6 Secretary and to the relevant head of each relevant
7 operational component of the Department.

8 ~~“(4) REPORTS TO CONGRESS.—~~Upon the con-
9 ~~clusion of any investigation conducted by the Officer~~
10 ~~for Civil Rights and Civil Liberties under paragraph~~
11 ~~(6) or (7) of subsection (b), the Officer shall submit~~
12 ~~to Congress a report on the investigation, which~~
13 ~~shall be prepared and submitted without any prior~~
14 ~~comment or amendment by the Secretary, Deputy~~
15 ~~Secretary, or any other officer or employee of the~~
16 ~~Department, unless the Officer seeks such comment.~~

17 ~~“(e) COMPONENT CIVIL RIGHTS AND CIVIL LIB-~~
18 ~~ERTIES OFFICER.—~~The head of each of the operational
19 components of the Department shall designate a career
20 appointee (as such term is defined in section 3132 of title
21 5, United States Code) from such component as the Offi-
22 cer for Civil Rights and Civil Liberties of that component.
23 The Officer for Civil Rights and Civil Liberties of each
24 such component shall coordinate with and provide infor-
25 mation to the Officer for Civil Rights and Civil Liberties

1 of the Department on matters related to civil rights and
2 civil liberties within the components.

3 “(f) ACCESS TO INFORMATION.—The Officer for Civil
4 Rights and Civil Liberties of the Department—

5 “(1) shall have access to all records, reports,
6 audits, reviews, documents, papers, recommenda-
7 tions, and other materials available to the Depart-
8 ment that relate to programs and operations with
9 respect to the responsibilities of the Officer under
10 subsection (b); and

11 “(2) may, to the extent the Officer determines
12 necessary, and subject to the approval of the Sec-
13 retary—

14 “(A) issue a subpoena to require the pro-
15 duction, by any person other than a Federal
16 agency, of all information, documents, reports,
17 answers, records, accounts, papers, and other
18 documentary evidence necessary in the perform-
19 ance of the responsibilities of the Officer under
20 this section; and

21 “(B) administer to or take from any per-
22 son an oath, affirmation, or affidavit, whenever
23 necessary in the performance of the responsibil-
24 ities of the Officer under this section.

1 “(g) ANNUAL REPORT.—Not later than March 31 of
2 each year, the Officer for Civil Rights and Civil Liberties
3 of the Department shall submit directly to the President,
4 the President of the Senate, the Speaker of the House of
5 Representatives, and the appropriate committees and sub-
6 committees of Congress, a report on the implementation
7 of this section during the year preceding the year during
8 which the report is submitted. Each such report shall in-
9 clude, for the year covered by the report—

10 “(1) any allegations of abuse described under
11 subsection (b)(6) and any actions by the Depart-
12 ment or a component, directorate, or office of the
13 Department that the Officer identifies as responsive
14 to such allegations;

15 “(2) a list of Department programs and activi-
16 ties for which civil rights and civil liberties impact
17 assessments were conducted, or policy advice, rec-
18 ommendations, or other technical assistance was
19 provided;

20 “(3) any recommendations issued by the Officer
21 to the Secretary or the head of a component, direc-
22 torate, or office, together with information on the
23 status of the implementation of such recommenda-
24 tions;

1 ~~“(4) information on the diversity and equal em-~~
2 ~~ployment opportunity activities of the Department,~~
3 ~~including information on complaint management and~~
4 ~~adjudication of equal employment opportunity com-~~
5 ~~plaints and efforts to ensure compliance throughout~~
6 ~~the Department with equal employment opportunity~~
7 ~~requirements;~~

8 ~~“(5) a description of any efforts to engage with~~
9 ~~individuals and communities whose civil rights and~~
10 ~~civil liberties may be affected by activities carried~~
11 ~~out by the Department, including public meetings;~~
12 ~~and~~

13 ~~“(6) information on total staffing for the Office~~
14 ~~of Civil Rights and Civil Liberties, including—~~

15 ~~“(A) the number of full-time, part-time~~
16 ~~and contract support personnel; and~~

17 ~~“(B) information on the number of em-~~
18 ~~ployees whose primary responsibilities include~~
19 ~~supporting the Officer in carrying out para-~~
20 ~~graph (9) of subsection (b).”.~~

21 ~~(b) CLERICAL AMENDMENT.—The item relating to~~
22 ~~section 705 in section 1(b) of the Homeland Security Act~~
23 ~~of 2002 is amended to read as follows:~~

1 **“SEC. 705. OFFICER FOR CIVIL RIGHTS AND CIVIL LIB-**
 2 **ERTIES.”.**

3 **SEC. 3. COMPTROLLER GENERAL REVIEW.**

4 Not later than 180 days after the date of the enact-
 5 ment of this Act, the Comptroller General of the United
 6 States shall submit to Congress a report on subsection
 7 (b)(11) of section 705 of the Homeland Security Act of
 8 2002 (6 U.S.C. 345), as amended by section 2.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Department of Home-*
 11 *land Security Office for Civil Rights and Civil Liberties*
 12 *Authorization Act”.*

13 **SEC. 2. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

14 *(a) IN GENERAL.—Section 705 of the Homeland Secu-*
 15 *rity Act of 2002 (6 U.S.C. 345) is amended—*

16 *(1) in the section heading, by striking “ESTAB-*
 17 *LISHMENT OF”; and*

18 *(2) by striking subsections (a) and (b) and in-*
 19 *serting the following new subsections:*

20 *“(a) IN GENERAL.—There is established within the De-*
 21 *partment an Office for Civil Rights and Civil Liberties. The*
 22 *head of such Office is the Officer for Civil Rights and Civil*
 23 *Liberties (referred to in this section as the ‘Officer’), who*
 24 *shall report directly to the Secretary.*

25 *“(b) RESPONSIBILITIES.—The Officer shall carry out*
 26 *the following responsibilities:*

1 “(1) *Oversee compliance with constitutional,*
2 *statutory, regulatory, policy, and other requirements*
3 *relating to the civil rights and civil liberties of indi-*
4 *viduals affected by the programs and activities of the*
5 *Department.*

6 “(2) *Integrate civil rights and civil liberties pro-*
7 *tections into all programs and activities of the De-*
8 *partment.*

9 “(3) *Conduct civil rights and civil liberties im-*
10 *part assessments, including, as appropriate, prior to*
11 *the implementation of new Department regulations,*
12 *initiatives, programs, or policies.*

13 “(4) *Conduct periodic reviews and assessments of*
14 *policies, procedures, and activities of the Department*
15 *relating to civil rights and civil liberties, including*
16 *reviews initiated by the Officer.*

17 “(5) *Provide policy advice, recommendations,*
18 *and other technical assistance relating to civil rights*
19 *and civil liberties to the Secretary and to heads of*
20 *components, directorates, and offices and other per-*
21 *sonnel within the Department.*

22 “(6) *Review, assess, and investigate complaints,*
23 *including complaints filed by members of the public,*
24 *and information indicating possible abuses of civil*
25 *rights or civil liberties at the Department, unless the*

1 *Inspector General of the Department determines that*
2 *any such complaint should be investigated by the In-*
3 *spector General.*

4 *“(7) As the Officer determines necessary, initiate*
5 *reviews, investigations, and assessments of the admin-*
6 *istration of the programs and activities of the Depart-*
7 *ment relating to civil rights and civil liberties.*

8 *“(8) Coordinate with the Privacy Officer to en-*
9 *sure that—*

10 *“(A) programs, policies, and procedures in-*
11 *volving civil rights, civil liberties, and privacy*
12 *considerations are addressed in an integrated*
13 *and comprehensive manner; and*

14 *“(B) Congress receives appropriate reports*
15 *regarding such programs, policies, and proce-*
16 *dures.*

17 *“(9) Lead the equal employment opportunity*
18 *programs of the Department, including complaint*
19 *management and adjudication, workforce diversity,*
20 *and promotion of the merit system principles.*

21 *“(10) On a semi-annual basis, make publicly*
22 *available through accessible communications channels,*
23 *including the website of the Department—*

24 *“(A) information on the responsibilities and*
25 *functions of, and how to contact, the Office;*

1 “(B) summaries of the investigations car-
2 ried out pursuant to paragraph (6) that result
3 in final recommendations that are issued by the
4 Officer ; and

5 “(C) summaries of impact assessments car-
6 ried out pursuant to paragraph (3) or (7) that
7 are issued by the Officer.

8 “(11) Engage with individuals and communities
9 whose civil rights and civil liberties may be affected
10 by programs and activities of the Department, includ-
11 ing by informing such individuals and communities
12 about report and redress processes and advising the
13 Secretary and heads of components, directorates, and
14 offices and other personnel within the Department of
15 concerns raised by such individuals and communities.

16 “(12) Lead the Language Access Program for the
17 Department to ensure the Department can effectively
18 communicate with all individuals impacted by pro-
19 grams and activities of the Department, including
20 those with limited English proficiency.

21 “(c) TRANSPARENCY.—

22 “(1) COMPLAINTS.—In the case of a complaint
23 made concerning allegations of abuses of civil rights
24 and civil liberties under paragraph (6) of subsection
25 (b), the Officer shall—

1 “(A) provide to the individual who made
2 the complaint notice of the receipt of such com-
3 plaint within 30 days of receiving the complaint;
4 and

5 “(B) inform the complainant of the deter-
6 mination of the Officer regarding the initiation
7 of a review, assessment, or investigation within
8 the Office, a referral to the Inspector General of
9 the Department, or any other action taken.

10 “(2) INVESTIGATIONS.—In the case of an inves-
11 tigation initiated by the Officer pursuant to para-
12 graph (6) or (7) of subsection (b) in which findings
13 or recommendations are issued, the Officer—

14 “(A) shall, on a semi-annual basis, make
15 publicly available through accessible communica-
16 tions channels, including the website of the De-
17 partment—

18 “(i) the findings and recommendations
19 of the Officer, if any; and

20 “(ii) a summary of the investigations
21 that result in final recommendations that
22 are issued by the Officer; and

23 “(B) shall not include in such findings, rec-
24 ommendations, or summary any personally

1 *identifiable information related to any indi-*
2 *vidual involved in such investigation.*

3 “(3) *SUBMITTAL TO HEADS OF OPERATIONAL*
4 *COMPONENTS.—The Officer shall transmit a copy of*
5 *each summary produced under paragraph (2) to the*
6 *Secretary and to the head of each relevant operational*
7 *component of the Department.*

8 “(4) *REPORTS TO CONGRESS.—Upon the conclu-*
9 *sion of any investigation conducted by the Officer*
10 *under paragraph (6) or (7) of subsection (b) in which*
11 *findings or recommendations are issued, the Officer*
12 *shall submit to Congress a report on the investigation,*
13 *which shall be prepared and submitted without any*
14 *prior comment or amendment by the Secretary, Dep-*
15 *uty Secretary, or any other officer or employee of the*
16 *Department or the Office of Management and Budget,*
17 *unless the Officer seeks such comment.*

18 “(d) *COMPONENT CIVIL RIGHTS AND CIVIL LIBERTIES*
19 *OFFICER.—The head of each of the operational components*
20 *of the Department, in consultation with the Officer, shall*
21 *designate a career appointee (as such term is defined in*
22 *section 3132 of title 5, United States Code) from such com-*
23 *ponent as the Officer for Civil Rights and Civil Liberties*
24 *of that component. The Officer for Civil Rights and Civil*
25 *Liberties of each such component shall coordinate with and*

1 *provide information to the Officer for Civil Rights and*
2 *Civil Liberties of the Department on matters related to civil*
3 *rights and civil liberties within the component.*

4 “(e) *ACCESS TO INFORMATION.—The Officer—*

5 “(1) *shall have access in a timely manner to all*
6 *records, reports, audits, reviews, documents, papers,*
7 *recommendations, and other materials available to the*
8 *Department that relate to programs and operations*
9 *with respect to the responsibilities of the Officer under*
10 *subsection (b); and*

11 “(2) *may, to the extent the Officer determines*
12 *necessary, and subject to the approval of the Sec-*
13 *retary, administer to or take from any person an*
14 *oath, affirmation, or affidavit, whenever necessary in*
15 *the performance of the responsibilities of the Officer*
16 *under this section.*

17 “(f) *ANNUAL REPORT.—Not later than March 31 of*
18 *each year, the Officer shall submit to the appropriate com-*
19 *mittees and subcommittees of Congress a report on the im-*
20 *plementation of this section during the year preceding the*
21 *year during which the report is submitted. Each such report*
22 *shall include, for the year covered by the report—*

23 “(1) *a list of Department programs and activi-*
24 *ties for which civil rights and civil liberties impact*
25 *assessments were conducted, or policy advice, rec-*

1 *ommendations, or other technical assistance was pro-*
2 *vided;*

3 *“(2) a list of Department programs and activi-*
4 *ties relating to civil rights and civil liberties that*
5 *have not had impact assessments conducted during*
6 *the 5-year period ending on the date of enactment of*
7 *the Department of Homeland Security Office of Civil*
8 *Rights and Civil Liberties Authorization Act;*

9 *“(3) an assessment of the efforts of the Depart-*
10 *ment through the Language Access Program to effec-*
11 *tively communicate with all individuals impacted by*
12 *programs and activities of the Department, including*
13 *those with limited English proficiency;*

14 *“(4) a summary of investigations resulting in*
15 *recommendations issued under paragraph (6) or (7)*
16 *of subsection (b) by the Officer to the Secretary or the*
17 *head of a component, directorate, or office, together*
18 *with information on the status of the component, di-*
19 *rectorate, or office’s implementation of such rec-*
20 *ommendations;*

21 *“(5) information on the diversity and equal em-*
22 *ployment opportunity activities of the Department,*
23 *including information on complaint management and*
24 *adjudication of equal employment opportunity com-*
25 *plaints and efforts to ensure compliance throughout*

1 *the Department with equal employment opportunity*
2 *requirements;*

3 “(6) *a description of any efforts to engage with*
4 *individuals and communities whose civil rights and*
5 *civil liberties may be affected by activities carried out*
6 *by the Department, including public meetings; and*

7 “(7) *information on total staffing for the Office*
8 *for Civil Rights and Civil Liberties, including—*

9 “(A) *the number of full-time, part-time and*
10 *contract support personnel; and*

11 “(B) *information on the number of employ-*
12 *ees whose primary responsibilities include sup-*
13 *porting the Officer in carrying out paragraph*
14 *(9) of subsection (b).”.*

15 (b) *CLERICAL AMENDMENT.—The item relating to sec-*
16 *tion 705 in section 1(b) of the Homeland Security Act of*
17 *2002 is amended to read as follows:*

 “*Sec. 705. Officer for civil rights and civil liberties.*”.

18 (c) *REPORTING TO CONGRESS.—Section*
19 *1062(f)(1)(A)(i) of the National Security Intelligence Re-*
20 *form Act of 2004 (42 U.S.C. 2000ee–1(f)(1)(A)(i)) is*
21 *amended by striking “the Committee on Oversight and Gov-*
22 *ernment Reform of the House of Representatives” and in-*
23 *serting “the Committee on Homeland Security of the House*
24 *of Representatives, the Committee on Oversight and Reform*
25 *of the House of Representatives”.*

1 **SEC. 3. COMPTROLLER GENERAL REVIEW.**

2 *Not later than 2 years after the date of the enactment*
3 *of this Act, the Comptroller General of the United States*
4 *shall submit to Congress a report on the implementation*
5 *of subsection (b)(11) of section 705 of the Homeland Secu-*
6 *rity Act of 2002 (6 U.S.C. 345), as amended by section 2.*

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[Report No. 116-280]

AN ACT

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes.

OCTOBER 19, 2020

Reported with an amendment