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(Original Signature of Member)

113TH CONGRESS
2D SESSION

H. R. 4291

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the bulk collection of call detail records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROGERS of Michigan (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the bulk collection of call detail records, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FISA Transparency
5 and Modernization Act”.

1 **SEC. 2. PROHIBITION ON BULK COLLECTION OF CALL DE-**
2 **TAIL RECORDS.**

3 Section 501(a) of the Foreign Intelligence Surveil-
4 lance Act of 1978 (50 U.S.C. 1861) is amended—

5 (1) in paragraph (1), by striking “other items”
6 and inserting “other items, but not including call de-
7 tail records”; and

8 (2) by adding at the end the following new
9 paragraph:”.

10 “(4) In this subsection, the term ‘call detail records’
11 means communications routing information, including an
12 original or terminating telephone number, an Inter-
13 national Mobile Subscriber Identity, an International Mo-
14 bile Station Equipment Identity, a trunk identifier, a tele-
15 phone calling card number, the time or duration of a call,
16 or original or terminating text-message numerical infor-
17 mation.”.

18 **SEC. 3. PROHIBITION ON BULK COLLECTION OF ELEC-**
19 **TRONIC COMMUNICATIONS RECORDS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of law, the Federal Government may not acquire
22 under the Foreign Intelligence Surveillance Act of 1978
23 (50 U.S.C. 1801 et seq.) records of any electronic commu-
24 nication without the use of specific identifiers or selection
25 terms.

1 (b) DEFINITION OF ELECTRONIC COMMUNICA-
2 TIONS.—In this section, the term “electronic communica-
3 tion” has the meaning given such term under section 2510
4 of title 18, United States Code.

5 **SEC. 4. PROHIBITION ON BULK COLLECTION OF CERTAIN**
6 **BUSINESS RECORDS.**

7 Notwithstanding any other provision of law, the Fed-
8 eral Government may not acquire under the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
10 library circulation records, library patron lists, book sales
11 records, book customer lists, firearm sales records, tax re-
12 turn records, educational records, or medical records con-
13 taining information that would identify a person without
14 the use of specific identifiers or selection terms.

15 **SEC. 5. APPOINTMENT OF AMICUS CURIAE.**

16 Section 103 of the Foreign Intelligence Surveillance
17 Act of 1978 (50 U.S.C. 1803) is amended by adding at
18 the end the following:

19 “(i) AMICUS CURIAE.—

20 “(1) AUTHORIZATION.—Notwithstanding any
21 other provision of law, a court established under
22 subsection (a) or (b) may, consistent with the re-
23 quirement of subsection (c) and any other statutory
24 requirement that the court act expeditiously or with-
25 in a stated time, to appoint amicus curiae to assist

1 the court in the consideration of a covered applica-
2 tion.

3 “(2) DESIGNATION.—The courts established by
4 subsection (a) and (b) shall each designate 1 or
5 more individuals who have been determined by ap-
6 propriate executive branch officials to be eligible for
7 access to classified information who may be ap-
8 pointed to serve as amicus curiae. In appointing an
9 amicus curiae pursuant to paragraph (1), the court
10 may choose from among those so designated.

11 “(3) EXPERTISE.—An individual appointed as
12 an amicus curiae under paragraph (1) may be a spe-
13 cial counsel or an expert on privacy and civil lib-
14 erties, intelligence collection, telecommunications, or
15 any other area that may lend legal or technical ex-
16 pertise to the court.

17 “(4) DUTIES.—An amicus curiae appointed
18 under paragraph (1) to assist with the consideration
19 of a covered application shall carry out the duties
20 assigned by the appointing court. That court may
21 authorize, to the extent consistent with the case or
22 controversy requirements of Article III of the Con-
23 stitution of the United States and the national secu-
24 rity of the United States, the amicus curiae to re-
25 view any application, certification, petition, motion,

1 or other submission that the court determines is rel-
2 evant to the duties assigned by the court.

3 “(5) NOTIFICATION.—A court established under
4 subsection (a) or (b) shall notify the Attorney Gen-
5 eral of each exercise of the authority to appoint an
6 amicus curiae under paragraph (1).

7 “(6) ASSISTANCE.—A court established under
8 subsection (a) or (b) may request and receive (in-
9 cluding on a non-reimbursable basis) the assistance
10 of the executive branch in the implementation of this
11 subsection.

12 “(7) ADMINISTRATION.—A court established
13 under subsection (a) or (b) may provide for the des-
14 ignation, appointment, removal, training, support, or
15 other administration of an amicus curiae appointed
16 under paragraph (1) in a manner that is not incon-
17 sistent with this subsection.

18 “(8) CONGRESSIONAL OVERSIGHT.—The Attor-
19 ney General shall submit to the appropriate commit-
20 tees of Congress an annual report on the number of
21 notices described in paragraph (5) received by Attor-
22 ney General for the preceding 12-month period.
23 Each such report shall include the name of each in-
24 dividual appointed as an amicus curiae during such
25 period.

1 “(9) DEFINITIONS.—In this subsection:

2 “(A) APPROPRIATE COMMITTEES OF CON-
3 GRESS.—The term ‘appropriate committees of
4 Congress’ means—

5 “(i) the Committee on the Judiciary
6 and the Select Committee on Intelligence
7 of the Senate; and

8 “(ii) the Committee on the Judiciary
9 and the Permanent Select Committee on
10 Intelligence of the House of Representa-
11 tives.

12 “(B) COVERED APPLICATION.—The term
13 ‘covered application’ means an application for
14 an order or review made to a court established
15 under subsection (a) or (b)—

16 “(i) that, in the opinion of such a
17 court, presents a novel or significant inter-
18 pretation of the law; and

19 “(ii) that is—

20 “(I) an application for an order
21 under this title, title III, IV, or V of
22 this Act, or section 703 or 704 of this
23 Act;

1 “(II) a review of a certification
2 or procedures under section 503 or
3 702 of this Act; or

4 “(III) a notice of non-compliance
5 with any such order, certification, or
6 procedures.”.

7 **SEC. 6. REPORTING REQUIREMENTS FOR DECISIONS OF**
8 **THE FOREIGN INTELLIGENCE SURVEIL-**
9 **LANCE COURT.**

10 Section 601(c)(1) of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1871(c)) is amended to read
12 as follows:

13 “(1) not later than 45 days after the date on
14 which the Foreign Intelligence Surveillance Court or
15 the Foreign Intelligence Surveillance Court of Re-
16 view issues a decision, order, or opinion that in-
17 cludes a significant construction or interpretation of
18 any provision of this Act or a denial of a request for
19 an order or a modification of a request for an order,
20 or results in a change of application of any provision
21 of this Act or a new application of any provision of
22 this Act—

23 “(A) a copy of such decision, order, or
24 opinion and any pleadings, applications, or

1 memoranda of law associated with such deci-
2 sion, order, or opinion; and

3 “(B) with respect to such decision, order,
4 or opinion, a brief statement of the relevant
5 background factual information, questions of
6 law, legal analysis, and decision rendered; and”.

7 **SEC. 7. DECLASSIFICATION OF DECISIONS, ORDERS, AND**
8 **OPINIONS.**

9 (a) DECLASSIFICATION.—Title VI of the Foreign In-
10 telligence Surveillance Act of 1978 (50 U.S.C. 1871 et
11 seq.) is amended—

12 (1) in the heading, by striking “**REPORT-**
13 **ING REQUIREMENT**” and inserting “**OVER-**
14 **SIGHT**”; and

15 (2) by adding at the end the following new sec-
16 tion:

17 **“SEC. 602. DECLASSIFICATION OF SIGNIFICANT DECISIONS,**
18 **ORDERS, AND OPINIONS.**

19 “(a) DECLASSIFICATION REQUIRED.—Subject to
20 subsection (b), the Director of National Intelligence shall
21 conduct a declassification review of each decision, order,
22 or opinion issued by the Foreign Intelligence Surveillance
23 Court or the Foreign Intelligence Surveillance Court of
24 Review that includes significant construction or interpre-
25 tation of any provision of this Act and, consistent with

1 that review, make publicly available to the greatest extent
2 practicable each such decision, order, or opinion.

3 “(b) REDACTED FORM.—The Director of National
4 Intelligence may satisfy the requirement under subsection
5 (a) to make a decision, order, or opinions described in such
6 subsection publicly available to the greatest extent prac-
7 ticable by making such decision, order, or opinion publicly
8 available in redacted form.

9 “(c) NATIONAL SECURITY WAIVER.—The Director of
10 National Intelligence may waive the requirement to declas-
11 sify and make publicly available a particular decision,
12 order, or opinion under subsection (a) if the Director—

13 “(1) determines that a waiver of such require-
14 ment is necessary to protect the national security of
15 the United States or properly classified intelligence
16 sources or methods; and

17 “(2) makes publicly available an unclassified
18 summary of such decision, order, or opinion.”.

19 (b) TABLE OF CONTENTS AMENDMENTS.—The table
20 of contents in the first section of such Act is amended—

21 (1) by striking the item relating to title VI and
22 inserting the following new item:

“TITLE VI—OVERSIGHT”; AND

23 (2) by inserting after the item relating to sec-
24 tion 601 the following new item:

“Sec. 602. Declassification of significant decisions, orders, and opinions.”.

1 **SEC. 8. PUBLIC REPORTING ON INCIDENTAL COLLECTION**
2 **OF UNITED STATES PERSON INFORMATION.**

3 Section 601 of the Foreign Intelligence Surveillance
4 Act of 1978 (50 U.S.C. 1871) is amended—

5 (1) by redesignating subsection (e) as sub-
6 section (f); and

7 (2) by inserting after subsection (d) the fol-
8 lowing new subsection:

9 “(e) PUBLIC REPORTING ON INCIDENTAL COLLEC-
10 TION OF UNITED STATES PERSON INFORMATION.—The
11 Attorney General shall annually make publicly available
12 a report describing the number of identified instances in
13 which the contents of a communication of a United States
14 person was acquired under this Act when the acquisition
15 authorized by this Act that resulted in the collection of
16 such contents could not reasonably have been anticipated
17 to capture such contents.”.

18 **SEC. 9. ANNUAL REPORTS ON VIOLATIONS OF LAW OR EX-**
19 **ECUTIVE ORDER.**

20 (a) IN GENERAL.—Title V of the National Security
21 Act of 1947 (50 U.S.C. 3091 et seq.) is amended by add-
22 ing at the end the following:

23 **“SEC. 509. ANNUAL REPORT ON VIOLATIONS OF LAW OR EX-**
24 **ECUTIVE ORDER.**

25 “(a) ANNUAL REPORTS REQUIRED.—Not later than
26 April 1 of each year, the Director of National Intelligence

1 shall submit to the congressional intelligence committees
2 a report on violations of law or executive order by per-
3 sonnel of an element of the intelligence community that
4 were identified during the previous calendar year.

5 “(b) ELEMENTS.—Each report required subsection
6 (a) shall include a description of any violation of law or
7 executive order (including Executive Order No. 12333 (50
8 U.S.C. 3001 note)) by personnel of an element of the intel-
9 ligence community in the course of such employment that,
10 during the previous calendar year, was determined by the
11 director, head, general counsel, or inspector general of any
12 element of the intelligence community to have occurred.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 in the first section of the National Security Act of 1947
15 is amended by adding after the section relating to section
16 508 the following:

“Sec. 509. Annual report on violations of law or executive order.”.

17 **SEC. 10. PERIODIC REVIEW OF INTELLIGENCE COMMUNITY**
18 **PROCEDURES FOR THE ACQUISITION, RETEN-**
19 **TION, AND DISSEMINATION OF INTEL-**
20 **LIGENCE.**

21 (a) IN GENERAL.—Title V of the National Security
22 Act of 1947 (50 U.S.C. 3091 et seq.), as amended by sec-
23 tion 9, is further amended by adding at the end the fol-
24 lowing:

1 “(2) REQUIREMENT FOR REVIEW.—Not less
2 frequently than once every 5 years, each head of an
3 element of the intelligence community shall conduct
4 a review of the procedures approved by the Attorney
5 General for such element that are required by sec-
6 tion 2.3 of Executive Order 12333 (50 U.S.C. 3001
7 note), or any successor order, in accordance with
8 paragraph (3).

9 “(3) REQUIREMENTS FOR REVIEWS.—In coordi-
10 nation with the Director of National Intelligence and
11 the Attorney General, the head of an element of the
12 intelligence community required to perform a review
13 under paragraphs (1) or (2) shall—

14 “(A) review existing procedures for such
15 element that are required by section 2.3 of Ex-
16 ecutive Order 12333 (50 U.S.C. 3001 note), or
17 any successor order, to assess whether—

18 “(i) advances in communications or
19 other technologies since the time the proce-
20 dures were most recently approved by the
21 Attorney General have affected the privacy
22 protections that the procedures afford to
23 United States persons, to include the pro-
24 tections afforded to United States persons
25 whose nonpublic communications are inci-

1 dentally acquired by an element of the in-
2 telligence community; or

3 “(ii) aspects of the existing proce-
4 dures impair the acquisition, retention, or
5 dissemination of timely, accurate, and in-
6 sightful information about the activities,
7 capabilities, plans, and intentions of for-
8 eign powers, organization, and persons,
9 and their agents; and

10 “(B) propose any modifications to existing
11 procedures for such element in order to—

12 “(i) clarify the guidance such proce-
13 dures afford to officials responsible for the
14 acquisition, retention, and dissemination of
15 intelligence;

16 “(ii) eliminate unnecessary impedi-
17 ments to the acquisition, retention, and
18 dissemination of intelligence; or

19 “(iii) ensure appropriate protections
20 for the privacy of United States persons
21 and persons located inside the United
22 States.

23 “(4) NOTICE.—The Director of National Intel-
24 ligence and the Attorney General shall notify the
25 congressional intelligence committees following the

1 completion of each review required under this sec-
2 tion.

3 “(5) REQUIREMENT TO PROVIDE PROCE-
4 DURES.—Upon the implementation of any modifica-
5 tions to procedures required by section 2.3 of Execu-
6 tive Order 12333 (50 U.S.C. 3001 note), or any suc-
7 cessor order, the head of the element of the intel-
8 ligence community to which the modified procedures
9 apply shall promptly provide a copy of the modified
10 procedures to the congressional intelligence commit-
11 tees.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 in the first section of the National Security Act of 1947,
14 as amended by section 9, is further amended by adding
15 after the section relating to section 509 the following:

“Sec. 510. Periodic review of intelligence community procedures for the acquisi-
tion, retention, and dissemination of intelligence.”.

16 **SEC. 11. PROCEDURES FOR TARGETED ACQUISITIONS OF**
17 **TERRORIST AND FOREIGN AGENT NON-CON-**
18 **TENT COMMUNICATIONS RECORDS.**

19 (a) IN GENERAL.—Title V of the Foreign Intelligence
20 Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is
21 amended by adding at the end the following new section:

1 **“SEC. 503. PROCEDURES FOR TARGETED ACQUISITIONS OF**
2 **TERRORIST AND FOREIGN AGENT NON-CON-**
3 **TENT COMMUNICATIONS RECORDS.**

4 “(a) **AUTHORIZATION.**—Notwithstanding any other
5 provision of law, upon the issuance of an order in accord-
6 ance with subsection (i)(3) or a determination under sub-
7 section (c)(2), the Attorney General and the Director of
8 National Intelligence may authorize jointly, for a period
9 of up to 1 year from the effective date of the authoriza-
10 tion, the acquisition from an electronic communication
11 service provider of records created as a result of commu-
12 nications of an individual or facility who, based on reason-
13 able and articulable suspicion, is—

14 “(1) a foreign power or the agent of a foreign
15 power;

16 “(2) associated with a foreign power or the
17 agent of a foreign power; or

18 “(3) in contact with, or known to, a suspected
19 agent of a foreign power.

20 “(b) **LIMITATIONS.**—An acquisition authorized under
21 subsection (a) shall be reasonably designed—

22 “(1) not to acquire—

23 “(A) the contents associated with any com-
24 munication;

1 “(B) records of wire or electronic commu-
2 nications without the use of specific identifiers
3 or selection terms;

4 “(C) information for an investigation of a
5 United States person conducted solely upon the
6 basis of activities protected by the first amend-
7 ment to the Constitution; or

8 “(D) the name, address, social security
9 number, employer or taxpayer identification
10 number, date of birth, or credit card number of
11 any United States person; and

12 “(2) to comply with the fourth amendment to
13 the Constitution of the United States.

14 “(c) CONDUCT OF ACQUISITION.—

15 “(1) IN GENERAL.—An acquisition authorized
16 under subsection (a) shall be conducted only—

17 “(A) in accordance with the selection and
18 civil liberties and privacy protection procedures
19 adopted in accordance with subsections (d) and
20 (e); and

21 “(B) upon submission of a certification in
22 accordance with subsection (g).

23 “(2) DETERMINATION.—A determination under
24 this paragraph and for purposes of subsection (a) is
25 a determination by the Attorney General and the Di-

1 rector of National Intelligence that exigent cir-
2 cumstances exist because, without immediate imple-
3 mentation of an authorization under subsection (a),
4 intelligence important to the national security of the
5 United States may be lost or not timely acquired
6 and time does not permit the issuance of an order
7 pursuant to subsection (i)(3) prior to the implemen-
8 tation of such authorization.

9 “(3) TIMING OF DETERMINATION.—The Attor-
10 ney General and the Director of National Intel-
11 ligence may make the determination under para-
12 graph (2)—

13 “(A) before the submission of a certifi-
14 cation in accordance with subsection (g); or

15 “(B) by amending a certification pursuant
16 to subsection (i)(1)(C) at any time during
17 which judicial review under subsection (i) of
18 such certification is pending.

19 “(d) SELECTION PROCEDURES.—

20 “(1) REQUIREMENT TO ADOPT.—The Attorney
21 General, in consultation with the Director of Na-
22 tional Intelligence, shall adopt selection procedures
23 that are reasonably designed to ensure that any ac-
24 quisition authorized under subsection (a) complies

1 with the requirements and limitations relating to
2 such acquisitions under subsections (a) and (b).

3 “(2) JUDICIAL REVIEW.—The procedures
4 adopted in accordance with paragraph (1) shall be
5 subject to judicial review pursuant to subsection (i).

6 “(e) CIVIL LIBERTIES AND PRIVACY PROTECTION
7 PROCEDURES.—

8 “(1) REQUIREMENT TO ADOPT.—The Attorney
9 General, in consultation with the Director of Na-
10 tional Intelligence, shall adopt civil liberties and pri-
11 vacy protection procedures that are reasonably de-
12 signed to—

13 “(A) minimize the impact of any acquisi-
14 tion authorized by (a) on the privacy and civil
15 liberties of United States persons; and

16 “(B) reasonably limit the receipt, reten-
17 tion, use, and disclosure of communications
18 records associated with a specific person when
19 such records are not necessary to understand
20 foreign intelligence information or assess the
21 importance of such information.

22 “(2) JUDICIAL REVIEW.—The civil liberties and
23 privacy protection procedures adopted in accordance
24 with paragraph (1) shall be subject to judicial review
25 pursuant to subsection (i).

1 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
2 TIONS.—

3 “(1) REQUIREMENT TO ADOPT.—The Attorney
4 General, in consultation with the Director of Na-
5 tional Intelligence, shall adopt guidelines to ensure—

6 “(A) compliance with the requirements and
7 limitations under subsections (a) and (b); and

8 “(B) that an application for a court order
9 is filed as required by this title.

10 “(2) SUBMISSION OF GUIDELINES.—The Attor-
11 ney General shall provide the guidelines adopted in
12 accordance with paragraph (1)—

13 “(A) the congressional intelligence commit-
14 tees;

15 “(B) the Committees on the Judiciary of
16 the Senate and the House of Representatives;
17 and

18 “(C) the Foreign Intelligence Surveillance
19 Court.

20 “(g) CERTIFICATION.—

21 “(1) IN GENERAL.—

22 “(A) REQUIREMENT TO SUBMIT CERTIFI-
23 CATION.—Subject to subparagraph (B), prior to
24 the implementation of an authorization under
25 subsection (a), the Attorney General and the

1 Director of National Intelligence shall provide
2 to the Foreign Intelligence Surveillance Court a
3 written certification and any supporting affi-
4 davit, under oath and under seal, in accordance
5 with this subsection.

6 “(B) EXCEPTION.—If the Attorney Gen-
7 eral and the Director of National Intelligence
8 make a determination under subsection (c)(2)
9 and time does not permit the submission of a
10 certification under this subsection prior to the
11 implementation of an authorization under sub-
12 section (a), the Attorney General and the Direc-
13 tor of National Intelligence shall submit to the
14 Court a certification for such authorization as
15 soon as practicable but in no event later than
16 7 days after such determination is made.

17 “(2) CERTIFICATION REQUIREMENTS.—A cer-
18 tification made under this subsection shall—

19 “(A) attest that—

20 “(i) procedures have been approved,
21 have been submitted for approval, or will
22 be submitted with the certification for ap-
23 proval by the Foreign Intelligence Surveil-
24 lance Court that are reasonably designed
25 to ensure compliance with the require-

1 ments and limitations under subsections
2 (a) and (b).

3 “(ii) the civil liberties and privacy pro-
4 tection procedures to be used with respect
5 to such acquisition—

6 “(I) meet the requirements of
7 civil liberties and privacy protection
8 procedures adopted under subsection
9 (e); and

10 “(II) have been approved, have
11 been submitted for approval, or will be
12 submitted with the certification for
13 approval by the Foreign Intelligence
14 Surveillance Court;

15 “(iii) guidelines have been adopted in
16 accordance with subsection (f) to ensure
17 compliance with the limitations in sub-
18 section (b) and to ensure that an applica-
19 tion for a court order is filed as required
20 by this chapter;

21 “(iv) the procedures and guidelines re-
22 ferred to in clauses (i), (ii), and (iii) are
23 consistent with the requirements of the
24 fourth amendment to the Constitution of
25 the United States;

1 “(v) a significant purpose of the ac-
2 quisition is to obtain foreign intelligence
3 information; (vi) the acquisition involves
4 obtaining foreign intelligence information
5 from or with the assistance of an electronic
6 communications service provider; and

7 “(vi) the acquisition complies with the
8 limitations in subsection (b);

9 “(B) include the procedures adopted in ac-
10 cordance with subsections (d) and (e);

11 “(C) be supported, as appropriate, by the
12 affidavit of any appropriate official in the area
13 of national security who is—

14 “(i) appointed by the President, by
15 and with the advice and consent of the
16 Senate; or

17 “(ii) the head of an element of the in-
18 telligence community;

19 “(D) include—

20 “(i) an effective date for the author-
21 ization that is at least 30 days after the
22 submission of the written certification to
23 the court; or

24 “(ii) if the acquisition has begun or
25 the effective date is less than 30 days after

1 the submission of the written certification
2 to the court, the date the acquisition began
3 or the effective date for the acquisition;
4 and

5 “(E) if the Attorney General and the Di-
6 rector of National Intelligence make a deter-
7 mination under subsection (c)(2), include a
8 statement that such determination has been
9 made.

10 “(3) CHANGE IN EFFECTIVE DATE.—The At-
11 torney General and the Director of National Intel-
12 ligence may advance or delay the effective date re-
13 ferred to in paragraph (2)(D) by submitting an
14 amended certification in accordance with subsection
15 (i)(1)(C) to the Foreign Intelligence Surveillance
16 Court for review pursuant to subsection (i).

17 “(4) MAINTENANCE OF CERTIFICATION.—The
18 Attorney General or a designee of the Attorney Gen-
19 eral shall maintain a copy of a certification made
20 under this subsection.

21 “(5) JUDICIAL REVIEW.—A certification sub-
22 mitted in accordance with this subsection shall be
23 subject to judicial review pursuant to subsection (i).

24 “(h) DIRECTIVES.—

1 “(1) **AUTHORITY.**—With respect to an acquisi-
2 tion authorized under subsection (a), the Attorney
3 General and the Director of National Intelligence
4 may direct, in writing, an electronic communications
5 service provider to—

6 “(A) immediately provide the Government
7 with records, whether existing or created in the
8 future, in the format specified by the Govern-
9 ment and in a manner that will protect the se-
10 crecy of the acquisition; and

11 “(B) maintain under security procedures
12 approved by the Attorney General and the Di-
13 rector of National Intelligence any records con-
14 cerning the aid furnished that such electronic
15 communication service provider retains.

16 “(2) **COMPENSATION AND ASSISTANCE.**—The
17 Government shall compensate, at the prevailing rate,
18 an electronic communications service provider for
19 providing records in accordance with directives
20 issued pursuant to paragraph (1). The Government
21 may provide any information, facilities, or assistance
22 necessary to aid an electronic communications serv-
23 ice provider in complying with a directive issued pur-
24 suant to paragraph (1).

1 “(3) RECORD REQUIREMENT.—For any direc-
2 tive issued under paragraph (1), the Attorney Gen-
3 eral shall retain a record of the information indi-
4 cating that, at the time the directive was issued, the
5 directive complied with the selection procedures es-
6 tablished by subsection (d).

7 “(4) JUDICIAL REVIEW.—

8 “(A) REQUIREMENT TO PROVIDE DIREC-
9 TIVES AND SUPPORTING RECORDS.—The Attor-
10 ney General shall promptly provide to the court
11 established by section 103(a) a copy of each di-
12 rective issued under paragraph (1) and a copy
13 of each record prepared under paragraph (3).

14 “(B) REMEDY FOR IMPROPER DIREC-
15 TIVES.—The court shall promptly consider each
16 directive and record provided under subpara-
17 graph (A), and if the court finds that a record
18 prepared under paragraph (3) does not meet
19 the requirements of the selection procedures es-
20 tablished by subsection (d), the court may order
21 that the production of records under the appli-
22 cable directive be terminated or modified, that
23 the information produced in response to the di-
24 rective be destroyed, or another appropriate
25 remedy.

1 “(5) CHALLENGING OF DIRECTIVES.—

2 “(A) AUTHORITY TO CHALLENGE.—An
3 electronic communications service provider re-
4 ceiving a directive issued pursuant to paragraph
5 (1) may file a petition to modify or set aside
6 such directive with the Foreign Intelligence
7 Surveillance Court, which shall have jurisdiction
8 to review such petition.

9 “(B) ASSIGNMENT.—The presiding judge
10 of the Court shall assign a petition filed under
11 subparagraph (A) to 1 of the judges serving in
12 the pool established under section 103(e)(1) not
13 later than 24 hours after the filing of such peti-
14 tion.

15 “(C) STANDARDS FOR REVIEW.—A judge
16 considering a petition filed under subparagraph
17 (A) may grant such petition only if the judge
18 finds that the directive does not meet the re-
19 quirements of this section or is otherwise un-
20 lawful.

21 “(D) PROCEDURES FOR INITIAL RE-
22 VIEW.—A judge shall conduct an initial review
23 of a petition filed under subparagraph (A) not
24 later than 5 days after being assigned such pe-
25 tition. If the judge determines that such peti-

1 tion consists of claims, defenses, or other legal
2 contentions that are not warranted by existing
3 law or consists of a frivolous argument for ex-
4 tending, modifying, or reversing existing law or
5 for establishing new law, the judge shall imme-
6 diately deny such petition and affirm the direc-
7 tive or any part of the directive that is the sub-
8 ject of such petition and order the recipient to
9 comply with the directive or any part of it.
10 Upon making a determination under this sub-
11 paragraph or promptly thereafter, the judge
12 shall provide a written statement for the record
13 of the reasons for such determination.

14 “(E) PROCEDURES FOR PLENARY RE-
15 VIEW.—If a judge determines that a petition
16 filed under subparagraph (A) requires plenary
17 review, the judge shall affirm, modify, or set
18 aside the directive that is the subject of such
19 petition not later than 30 days after being as-
20 signed such petition. If the judge does not set
21 aside the directive, the judge shall immediately
22 affirm or affirm with modifications the direc-
23 tive, and order the recipient to comply with the
24 directive in its entirety or as modified. The
25 judge shall provide a written statement for the

1 record of the reasons for a determination under
2 this subparagraph.

3 “(F) CONTINUED EFFECT.—Any directive
4 not explicitly modified or set aside under this
5 paragraph shall remain in full effect.

6 “(G) CONTEMPT OF COURT.—Failure to
7 obey an order issued under this paragraph may
8 be punished by the Court as contempt of court.

9 “(6) ENFORCEMENT OF DIRECTIVES.—

10 “(A) ORDER TO COMPEL.—If an electronic
11 communications service provider fails to comply
12 with a directive issued pursuant to paragraph
13 (1), the Attorney General may file a petition for
14 an order to compel the service to comply with
15 the directive with the Foreign Intelligence Sur-
16 veillance Court, which shall have jurisdiction to
17 review such petition.

18 “(B) ASSIGNMENT.—The presiding judge
19 of the Court shall assign a petition filed under
20 subparagraph (A) to 1 of the judges serving in
21 the pool established under section 103(e)(1) not
22 later than 24 hours after the filing of such peti-
23 tion.

24 “(C) PROCEDURES FOR REVIEW.—A judge
25 considering a petition filed under subparagraph

1 (A) shall, not later than 30 days after being as-
2 signed such petition, issue an order requiring
3 the electronic communications service provider
4 to comply with the directive or any part of it,
5 as issued or as modified, if the judge finds that
6 the directive meets the requirements of this sec-
7 tion and is otherwise lawful. The judge shall
8 provide a written statement for the record of
9 the reasons for a determination under this
10 paragraph.

11 “(D) CONTEMPT OF COURT.—Failure to
12 obey an order issued under this paragraph may
13 be punished by the Court as contempt of court.

14 “(E) PROCESS.—Any process under this
15 paragraph may be served in any judicial district
16 in which the electronic communications service
17 provider may be found.

18 “(7) APPEAL.—

19 “(A) APPEAL TO THE COURT OF RE-
20 VIEW.—The Government or an electronic com-
21 munications service provider receiving a direc-
22 tive issued pursuant to paragraph (1) may file
23 a petition with the Foreign Intelligence Surveil-
24 lance Court of Review for review of a decision
25 issued pursuant to paragraph (4) or (5). The

1 Court of Review shall have jurisdiction to con-
2 sider such petition and shall provide a written
3 statement for the record of the reasons for a
4 decision under this subparagraph.

5 “(B) CERTIORARI TO THE SUPREME
6 COURT.—The Government or an electronic com-
7 munications service provider receiving a direc-
8 tive issued pursuant to paragraph (1) may file
9 a petition for a writ of certiorari for review of
10 a decision of the Court of Review issued under
11 subparagraph (A). The record for such review
12 shall be transmitted under seal to the Supreme
13 Court of the United States, which shall have ju-
14 risdiction to review such decision.

15 “(8) RULE OF CONSTRUCTION.—Nothing in
16 this subsection shall be construed to prevent a direc-
17 tive issued under paragraph (1) from requiring an
18 electronic communications service provider to
19 produce additional records, whether existing or cre-
20 ated in the future, based on records produced by a
21 previous directive issued under paragraph (1).

22 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
23 PROCEDURES.—

24 “(1) IN GENERAL.—

1 “(A) REVIEW BY THE FOREIGN INTEL-
2 LIGENCE SURVEILLANCE COURT.—The Foreign
3 Intelligence Surveillance Court shall have juris-
4 diction to review a certification submitted in ac-
5 cordance with subsection (g) and the selection
6 and civil liberties and privacy protection proce-
7 dures adopted in accordance with subsections
8 (d) and (e), and amendments to such certifi-
9 cation or such procedures.

10 “(B) TIME PERIOD FOR REVIEW.—The
11 Court shall review a certification submitted in
12 accordance with subsection (g) and the selection
13 and civil liberties and privacy protection proce-
14 dures adopted in accordance with subsections
15 (d) and (e) and shall complete such review and
16 issue an order under paragraph (3) not later
17 than 30 days after the date on which such cer-
18 tification and such procedures are submitted.

19 “(C) AMENDMENTS.—The Attorney Gen-
20 eral and the Director of National Intelligence
21 may amend a certification submitted in accord-
22 ance with subsection (g) or the selection and
23 civil liberties and privacy protection procedures
24 adopted in accordance with subsections (d) and
25 (e) as necessary at any time, including if the

1 Court is conducting or has completed review of
2 such certification or such procedures, and shall
3 submit the amended certification or amended
4 procedures to the Court not later than 7 days
5 after amending such certification or such proce-
6 dures. The Court shall review any amendment
7 under this subparagraph under the procedures
8 set forth in this subsection. The Attorney Gen-
9 eral and the Director of National Intelligence
10 may authorize the use of an amended certifi-
11 cation or amended procedures pending the
12 Court's review of such amended certification or
13 amended procedures.

14 “(2) REVIEW.—The Court shall review the fol-
15 lowing:

16 “(A) CERTIFICATION.—A certification sub-
17 mitted in accordance with subsection (g) to de-
18 termine whether the certification contains all
19 the required elements.

20 “(B) SELECTION PROCEDURES.—The se-
21 lection procedures adopted in accordance with
22 subsection (d) to assess whether the procedures
23 are reasonably designed to meet the require-
24 ments of subsection (d).

1 “(C) CIVIL LIBERTIES AND PRIVACY PRO-
2 TECTION PROCEDURES.—The civil liberties and
3 privacy protection procedures adopted in ac-
4 cordance with subsection (e) to assess whether
5 such procedures meet the requirements of sub-
6 section (e).

7 “(3) ORDERS.—

8 “(A) APPROVAL.—If the Court finds that
9 a certification submitted in accordance with
10 subsection (g) contains all the required ele-
11 ments and that the selection and civil liberties
12 and privacy protection procedures adopted in
13 accordance with subsections (d) and (e) are
14 consistent with the requirements of those sub-
15 sections and with the fourth amendment to the
16 Constitution of the United States, the Court
17 shall enter an order approving the certification
18 and the use, or continued use in the case of an
19 acquisition authorized pursuant to a determina-
20 tion under subsection (c)(2), of the procedures
21 for the acquisition.

22 “(B) CORRECTION OF DEFICIENCIES.—If
23 the Court finds that a certification submitted in
24 accordance with subsection (g) does not contain
25 all the required elements, or that the proce-

1 dures adopted in accordance with subsections
2 (d) and (e) are not consistent with the require-
3 ments of those subsections or the fourth
4 amendment to the Constitution of the United
5 States, the Court shall issue an order directing
6 the Government to, at the Government’s elec-
7 tion and to the extent required by the Court’s
8 order—

9 “(i) correct any deficiency identified
10 by the Court’s order not later than 30 days
11 after the date on which the Court issues
12 the order; or

13 “(ii) cease, or not begin, the imple-
14 mentation of the authorization for which
15 such certification was submitted.

16 “(C) REQUIREMENT FOR WRITTEN STATE-
17 MENT.—In support of an order under this sub-
18 section, the Court shall provide, simultaneously
19 with the order, for the record a written state-
20 ment of the reasons for the order.

21 “(4) APPEAL.—

22 “(A) APPEAL TO THE COURT OF RE-
23 VIEW.—The Government may file a petition
24 with the Foreign Intelligence Surveillance Court
25 of Review for review of an order under this sub-

1 section. The Court of Review shall have juris-
2 diction to consider such petition. For any deci-
3 sion under this subparagraph affirming, revers-
4 ing, or modifying an order of the Foreign Intel-
5 ligence Surveillance Court, the Court of Review
6 shall provide for the record a written statement
7 of the reasons for the decision.

8 “(B) CONTINUATION OF ACQUISITION
9 PENDING REHEARING OR APPEAL.—Any acqui-
10 sition affected by an order under paragraph
11 (3)(B) may continue—

12 “(i) during the pendency of any re-
13 hearing of the order by the Court en banc;
14 and

15 “(ii) if the Government files a petition
16 for review of an order under this section,
17 until the Court of Review enters an order
18 under subparagraph (C).

19 “(C) IMPLEMENTATION PENDING AP-
20 PEAL.—Not later than 60 days after the filing
21 of a petition for review of an order under para-
22 graph (3)(B) directing the correction of a defi-
23 ciency, the Court of Review shall determine,
24 and enter a corresponding order regarding,
25 whether all or any part of the correction order,

1 as issued or modified, shall be implemented
2 during the pendency of the review.

3 “(D) CERTIORARI TO THE SUPREME
4 COURT.—The Government may file a petition
5 for a writ of certiorari for review of a decision
6 of the Court of Review issued under subpara-
7 graph (A). The record for such review shall be
8 transmitted under seal to the Supreme Court of
9 the United States, which shall have jurisdiction
10 to review such decision.

11 “(5) SCHEDULE.—

12 “(A) REAUTHORIZATION OF AUTHORIZA-
13 TIONS IN EFFECT.—If the Attorney General
14 and the Director of National Intelligence seek
15 to reauthorize or replace an authorization
16 issued under subsection (a), the Attorney Gen-
17 eral and the Director of National Intelligence
18 shall, to the extent practicable, submit to the
19 Court the certification prepared in accordance
20 with subsection (g) and the procedures adopted
21 in accordance with subsections (d) and (e) at
22 least 30 days prior to the expiration of such au-
23 thorization.

24 “(B) REAUTHORIZATION OF ORDERS, AU-
25 THORIZATIONS, AND DIRECTIVES.—If the At-

1 torney General and the Director of National In-
2 telligence seek to reauthorize or replace an au-
3 thorization issued under subsection (a) by filing
4 a certification pursuant to subparagraph (A),
5 that authorization, and any directives issued
6 thereunder and any order related thereto, shall
7 remain in effect, notwithstanding the expiration
8 provided for in subsection (a), until the Court
9 issues an order with respect to such certifi-
10 cation under paragraph (3) at which time the
11 provisions of that paragraph and paragraph (4)
12 shall apply with respect to such certification.

13 “(j) JUDICIAL PROCEEDINGS.—

14 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-
15 dicial proceedings under this section shall be con-
16 ducted as expeditiously as possible.

17 “(2) TIME LIMITS.—A time limit for a judicial
18 decision in this section shall apply unless the Court,
19 the Court of Review, or any judge of either the
20 Court or the Court of Review, by order for reasons
21 stated, extends that time as necessary for good
22 cause in a manner consistent with national security.

23 “(k) MAINTENANCE AND SECURITY OF RECORDS
24 AND PROCEEDINGS.—

1 “(1) STANDARDS.—The Foreign Intelligence
2 Surveillance Court shall maintain a record of a pro-
3 ceeding under this section, including petitions, ap-
4 peals, orders, and statements of reasons for a deci-
5 sion, under security measures adopted by the Chief
6 Justice of the United States, in consultation with
7 the Attorney General and the Director of National
8 Intelligence.

9 “(2) FILING AND REVIEW.—All petitions under
10 this section shall be filed under seal. In any pro-
11 ceedings under this section, the Court shall, upon re-
12 quest of the Government, review *ex parte* and in
13 camera any Government submission, or portions of
14 a submission, which may include classified informa-
15 tion.

16 “(3) RETENTION OF RECORDS.—The Attorney
17 General and the Director of National Intelligence
18 shall retain a directive or an order issued under this
19 section for a period of not less than 10 years from
20 the date on which such directive or such order is
21 issued.

22 “(1) ASSESSMENTS AND REVIEWS.—

23 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
24 quently than once every 6 months, the Attorney
25 General and Director of National Intelligence shall

1 assess compliance with the selection and civil lib-
2 erties and privacy protection procedures adopted in
3 accordance with subsections (d) and (e) and the
4 guidelines adopted in accordance with subsection (f).
5 The assessment shall also include the aggregate
6 number of directives issued under subsection (h)
7 during the relevant time period. The Attorney Gen-
8 eral and Director of National Intelligence shall sub-
9 mit each assessment to—

10 “(A) the Foreign Intelligence Surveillance
11 Court; and

12 “(B) consistent with the Rules of the
13 House of Representatives, the Standing Rules
14 of the Senate, and Senate Resolution 400 of the
15 94th Congress or any successor Senate resolu-
16 tion—

17 “(i) the congressional intelligence
18 committees; and

19 “(ii) the Committees on the Judiciary
20 of the House of Representatives and the
21 Senate.

22 “(2) AGENCY ASSESSMENT.—The Inspector
23 General of the Department of Justice and the In-
24 spector General of each element of the intelligence
25 community authorized to acquire communications

1 records under subsection (a), with respect to the de-
2 partment or element of such Inspector General—

3 “(A) are authorized to review compliance
4 with the selection and civil liberties and privacy
5 protection procedures adopted in accordance
6 with subsections (d) and (e) and the guidelines
7 adopted in accordance with subsection (f);

8 “(B shall provide each such review to—

9 “(i) the Attorney General;

10 “(ii) the Director of National Intel-
11 ligence; and

12 “(iii) consistent with the Rules of the
13 House of Representatives, the Standing
14 Rules of the Senate, and Senate Resolution
15 400 of the 94th Congress or any successor
16 Senate resolution—

17 “(I) the congressional intelligence
18 committees; and

19 “(II) the Committees on the Ju-
20 diciary of the House of Representa-
21 tives and the Senate.

22 “(m) DEFINITIONS.—In this section:

23 “(1) The terms ‘contents’, ‘wire communica-
24 tion’, and ‘electronic communication’ have the mean-

1 ing given such terms in section 2510 of title 18,
2 United States Code.

3 “(2) The term ‘electronic communication serv-
4 ice provider’ has the meaning given such term in
5 section 701.

6 “(3) The terms ‘foreign power’ and ‘agent of a
7 foreign power’ have the meanings given such terms
8 in section 101.”.

9 (b) CLERICAL AMENDMENT.—The table of contents
10 in the first section of the Foreign Intelligence Surveillance
11 Act of 1978 (50 U.S.C. 1801 note) is amended by insert-
12 ing after the item relating to section 502 the following
13 new item:

“Sec. 503. Procedures for targeted acquisitions of terrorist and foreign agent
non-content communications records.”.

14 (c) CONFORMING AMENDMENT.—Section 802(a)(3)
15 of the Foreign Intelligence Surveillance Act of 1978 (50
16 U.S.C. 1885a) is amended by striking “or 702(h)” and
17 inserting “503(h), or 702(h)”.

18 **SEC. 12. CONTINUOUS EVALUATION AND SHARING OF DE-**
19 **ROGATORY INFORMATION REGARDING PER-**
20 **SONNEL WITH ACCESS TO CLASSIFIED IN-**
21 **FORMATION.**

22 Section 102A(j) of the National Security Act of 1947
23 (50 U.S.C. 3024(j)) is amended—

1 (1) in the heading, by striking “SENSITIVE
2 COMPARTMENTED INFORMATION” and inserting
3 “CLASSIFIED INFORMATION”;

4 (2) in paragraph (3), by striking “; and” and
5 inserting a semicolon;

6 (3) in paragraph (4), by striking the period and
7 inserting a semicolon; and

8 (4) by adding at the end the following new
9 paragraphs:

10 “(5) ensure that the background of each em-
11 ployee or officer of an element of the intelligence
12 community, each contractor to an element of the in-
13 telligence community, and each individual employee
14 of such a contractor who has been determined to be
15 eligible for access to classified information is mon-
16 itored on a continual basis under standards devel-
17 oped by the Director, including with respect to the
18 frequency of evaluation, during the period of eligi-
19 bility of such employee or officer of an element of
20 the intelligence community, such contractor, or such
21 individual employee to such a contractor to deter-
22 mine whether such employee or officer of an element
23 of the intelligence community, such contractor, and
24 such individual employee of such a contractor con-

1 continues to meet the requirements for eligibility for ac-
2 cess to classified information; and

3 “(6) develop procedures to require information
4 sharing between elements of the intelligence commu-
5 nity concerning potentially derogatory security infor-
6 mation regarding an employee or officer of an ele-
7 ment of the intelligence community, a contractor to
8 an element of the intelligence community, or an indi-
9 vidual employee of such a contractor that may im-
10 pact the eligibility of such employee or officer of an
11 element of the intelligence community, such con-
12 tractor, or such individual employee of such a con-
13 tractor for a security clearance.”.

14 **SEC. 13. REQUIREMENTS FOR INTELLIGENCE COMMUNITY**
15 **CONTRACTORS.**

16 (a) **REQUIREMENTS.**—Section 102A of the National
17 Security Act of 1947 (50 U.S.C. 3024) is amended by
18 adding at the end the following new subsection:

19 “(x) **REQUIREMENTS FOR INTELLIGENCE COMMU-**
20 **NITY CONTRACTORS.**—The Director of National Intel-
21 ligence, in consultation with the head of each department
22 of the Federal Government that contains an element of
23 the intelligence community and the Director of the Central
24 Intelligence Agency, shall—

25 “(1) ensure that—

1 “(A) any contractor to an element of the
2 intelligence community with access to a classi-
3 fied network or classified information develops
4 and operates a security plan that is consistent
5 with standards established by the Director of
6 National Intelligence for intelligence community
7 networks; and

8 “(B) each contract awarded by an element
9 of the intelligence community includes provi-
10 sions requiring the contractor comply with such
11 plan and such standards;

12 “(2) conduct periodic assessments of each secu-
13 rity plan required under paragraph (1)(A) to ensure
14 such security plan complies with the requirements of
15 such paragraph; and

16 “(3) ensure that the insider threat detection ca-
17 pabilities and insider threat policies of the intel-
18 ligence community apply to facilities of contractors
19 with access to a classified network.”.

20 (b) **APPLICABILITY.**—The amendment made by sub-
21 section (a) shall apply with respect to contracts entered
22 into or renewed after the date of the enactment of this
23 Act.